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No. 1035

IN THE

Supreme Court of the United States

October Term, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, et al.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES AND APPENDICES

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BRIEF FOR APPELLEES

Opinion below

The opinion of the District Court for the Northern District of Illinois (R. 21) is reported in 69 F. Supp. 170.

Jurisdiction

The judgment of the district court dismissing the complaint was entered on December 2, 1946 (R. 27). Petition for appeal was filed and allowed on January 27, 1947 (R. 28, 30). The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. 345. On February 11, 1947, the defendants filed

a motion to dismiss or affirm under Rules 12(3) and 7(4) of this Court. No decision was rendered on that motion. Probable jurisdiction was noted on March 17, 1947 (R. 34).

Statute Involved

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1, (as amended by the Act of August 17, 1937, 50 Stat. 693). Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * (15 U. S. C. 1.)
>
> Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *. (15 U. S. C. 2.)

Questions Presented

1. Whether exclusive purchases of taxicabs from a non-monopolist manufacturer by its affiliated operating companies (which are subject to municipal regulation, and some of which were acquired to effect such exclusive purchases) violate the Sherman Act because, as a result, other manufacturers are excluded from the opportunity of selling taxicabs to the operating companies.

2. Whether licensed taxicab operating companies which are precluded by municipal regulation from engaging in a restricted inter-station transportation service pursuant to contracts with railroads, and which have never engaged or contemplated engaging in such restricted inter-station transportation, are required to change the character of

their business so as to compete with an affiliate which is engaged in such restricted business.

3. (a) Whether the assertion by taxicab operating companies of valid license and priority rights violates the Sherman Act because, as a result, others are excluded from possible participation in the limited number of outstanding licenses.

(b) Whether the municipally licensed, public taxicab services in the City of Chicago constitute interstate commerce merely because such taxicabs sometimes carry persons who have been or are about to become interstate railroad passengers.

Statement

The complaint charges that the defendants have conspired to restrain and monopolize interstate trade and commerce (a) in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Pittsburgh, New York and Minneapolis, and (b) in the business of furnishing cab services for hire in Chicago (R. 7).

The defendants moved in the District Court, under Rule 12(b) of the Rules of Civil Procedure, to dismiss the complaint for failure to state a claim upon which relief might be granted, and, alternatively, for partial judgment dismissing such part of the claim as was based on the furnishing of cab services for hire in Chicago (R. 19-20). The District Court granted the motion in its entirety (R. 27).

Yellow* operates taxicabs in Chicago, pursuant to licenses issued to it by the City of Chicago, and Cab Sales operates

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* The designations of the defendants in the brief for the United States are used in this brief.

taxicabs in Chicago, pursuant to licenses issued to Checker by the City of Chicago and leased by Checker to Cab Sales (R. 6). Parmelee operates unlicensed "cabs"* in Chicago which transport railroad passengers between Chicago railroad stations pursuant to contracts with railroads, and also owns subsidiaries which operate or manage the operations of a number of taxicabs in New York, Pittsburgh and Minneapolis (R. 6-7). CCM manufactures taxicabs in Michigan and sells them (R. 4). Markin is the president of CCM (R. 3). Yellow, Cab Sales, CCM, Checker and Parmelee are alleged to be subject to common stock control (R. 2-3), and, for the purposes of this appeal only, this is conceded. Markin and Cab Sales so control CCM and Checker (R. 3)**; CCM so controls Parmelee (R. 2); and Parmelee so controls Yellow and the New York, Pittsburgh and Minneapolis subsidiaries (R. 2).

The operations of taxicabs in Chicago are comprehensively regulated by ordinances of the City of Chicago (Ordinance of September 25, 1929 (Mun. Code of Chicago (1931 ed.) Chap. 41); Ordinance of May 18, 1934 (Mun. Code of Chicago, Chap. 195A); Ordinance of December 22, 1937 (Mun. Code of Chicago, Chap. 196A); Ordinance of June 26, 1945 (Mun. Code of Chicago, Chap. 196A)).

These ordinances place limitations on the number of taxicab licenses which may be issued (subject to increases, on showing of public convenience and necessity); establish rates and standards of service; and otherwise provide for

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* These "cabs" are actually limousine-coaches carrying 7 and 10 passengers; were so referred to by both sides on the argument before the District Court; and the District Court in effect judicially noticed the fact by stating that the Yellow & Cab Sales "taxicab business was totally different, from Parmelee's both from a standpoint of equipment used and * * *" (R. 27).

** Checker is presently controlled by existing or former officers or directors of CCM and Cab Sales (R. 3).

detailed regulation. Their text is included as Appendices to this brief.*

The 1937 ordinance, subsequently extended in 1945, reduced the number of outstanding taxicab licenses to 3,000 through voluntary surrenders by licensees; and granted the surrendering licensees a prior right to new licenses, on any subsequent increase, equal to the number of licenses surrendered by them (R. 5-6).

Yellow presently owns 1,595 Chicago licenses and has priority rights to 571 new licenses. Checker presently owns 1,000 Chicago licenses and has priority rights to 500 new licenses (R. 6, 15).

On January 22, 1947, the Supreme Court of Illinois, affirming a decision of the Illinois Circuit Court rendered February 5, 1946,** held that the mentioned ordinances, and Yellow and Checker's license and priority rights under such ordinances, were valid; and that no monopoly existed, since the number of licenses and the rights of the licensees were subject to the control of the City of Chicago. *Yellow Cab Co.* v. *City of Chicago,* 71 N. E. 2d 652. These opinions (which are included as Appendices E and F to this brief) describe the taxicab history and ordinances of the City of Chicago, and disclose the manner in which the ordinances were adapted, from time to time, to the exigencies of changing conditions.

The violations of the Sherman Act claimed by the plaintiff on this appeal are (1) that CCM and Markin acquired control of Yellow, Cab Sales and, through Parmelee, the

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* See Appendices A to D, inclusive. These ordinances are referred to in the complaint (R. 5-6). Their text was submitted to the District Court as an appendix to defendants' brief; was judicially noticed by the District Court (R. 25); and is considered by the plaintiff to be before this Court (Plaintiff's Brief, p. 10). Judicial notice of these ordinances was appropriate under the pertinent statute and rule (*Smith-Hurd,* Ill. Ann. Stats., Ch. 51, Secs. 48(a)(b); Rule 43(a) of Rules of Civil Procedure); and is accordingly appropriate on this appeal (*Adam* v. *Saenger,* 303 U. S. 59, 63).

** It is to this lower court decision that the complaint refers (R. 6).

New York, Pittsburgh and Minneapolis subsidiaries, with the purpose and result that they purchase their requirements of cabs only from CCM, (2) that Yellow and Cab Sales, licensed operators, will not compete with Parmelee, a non-licensed operator, for contracts with railroads to transport railroad passengers between Chicago railroad stations, and (3) that Yellow and Checker, by asserting their license and priority rights, exclude others from possible participation in the limited number of outstanding licenses. Certain other claimed violations asserted by the plaintiff in the complaint and before the District Court have been abandoned in its brief before this Court, and, accordingly, are not treated in this brief.

Although the allegations of the complaint are discursive, the thrust of the complaint and of the plaintiff's argument before the District Court was directed against the license and priority rights issued to Yellow and Checker by the City of Chicago. The plaintiff's argument before this Court represents a departure from its argument in the District Court, which in part will be adverted to below.

Summary of Argument

I

Although the complaint does not allege interstate sales of taxicabs by manufacturers other than CCM, the plaintiff argues that a violation of the Sherman Act occurs because, as a result of exclusive purchases of taxicabs by the operating companies from CCM, manufacturers other than CCM are excluded from the opportunity of selling their taxicabs to the operating companies. Exclusive dealing arrangements, however, do not *per se* violate the Sherman Act. They conflict with the Sherman Act only when they are "unreasonable" or cause "an injury to the public". The test of reasonableness and public injury equally applies to the acquisition of subsidiaries or affiliates for the purpose of effecting such exclusive deal-

ing arrangements. In the instant case, the only substantial impact of the operating companies' exclusive purchases of taxicabs from CCM is the use of such taxicabs in the localities which the operating companies serve. This use is, however, subject to the local regulatory control of the City of Chicago and the other cities mentioned in the complaint. Local control has been exercised by the City of Chicago by ordinances of comprehensive scope, which regulate the physical requirements of taxicabs and establish the rates charged to the public for their use. This control by the City of Chicago precludes any public injury from exclusive purchases of taxicabs, and CCM concededly is not a national monopolist but an extremely small manufacturer. The power of the City of Chicago to control the use of its streets and the operation of taxicabs on them is similar to its power to grant franchises to public service enterprises. The Sherman Act does not operate against rights or restraints flowing from such municipal control. The issuance, reissuance and extension of the licenses issued by the City of Chicago to Yellow and Checker constitute in effect a local legislative reaffirmation of the propriety of the exercise of such licenses by Yellow and Checker. In New York, Pittsburgh, and Minneapolis, similar licensing conditions prevail, besides which the defendants' operations in those cities do not achieve the percentages or numbers required to constitute monopolization.

II

The plaintiff's claim that the Sherman Act has been violated because Yellow and Cab Sales will not compete with Parmelee for contracts with railroads to transport passengers between Chicago railroad stations, breaks against the ordinances of the City of Chicago. Yellow and Cab Sales operate their taxicabs as licensees of the City of Chicago. They are required by ordinance to carry "every person" to whatever destination he chooses within Chicago. Parmelee holds no licenses from the City of Chicago and operates limousine-coaches only for railroad passengers

and only between railroad stations. The duties imposed by ordinance on Yellow and Cab Sales to carry "every person" anywhere within Chicago cannot, as in the case of Parmelee, be restricted by contracts with railroads to the carriage of only railroad passengers only between railroad stations. Subject, however, to the ordinances binding them, Yellow and Cab Sales do offer their services to all railroad passengers at Chicago railroad stations, and, therefore, in that respect, do compete with Parmelee. The plaintiff's argument that, although the services of Yellow and Cab Sales are distinct from those of Parmelee, Yellow and Cab Sales are nevertheless natural potential competitors for railroad contracts, is purely conjectural. There is no suggestion anywhere in the complaint that Yellow or Cab Sales (or their predecessors) ever had or ever contemplated obtaining contracts with railroads; and particularly absent from the complaint is any suggestion that competition actually threatened was forestalled. Yellow and Cab Sales are not required to change the character of their business so as to compete with Parmelee, their affiliate.

III

The validity of Yellow and Checker's license and priority rights under the ordinances of the City of Chicago has specifically been established by the Supreme Court of Illinois in *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652. The license rights of Yellow and Checker derive from these ordinances; and any exclusion of other potential licensees, resulting from the assertion by Yellow and Checker of their license and priority rights accordingly flows from these ordinances. The Sherman Act, however, does not operate against any rights or restraints flowing from state or local regulation. The plaintiff's contention that it does not attack the right of the City of Chicago to issue taxicab licenses but seeks only to preclude Yellow and Checker from exercising their rights under such licenses is merely an argument for the accomplishment indirectly of a result which concededly cannot be accomplished directly. More-

over, the license rights of Yellow and Checker which the plaintiff seeks to abrogate are the very rights which the Supreme Court of Illinois specifically has sustained. *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 852.

The Chicago taxicab operations of Yellow and Cab Sales do not become interstate commerce because some of their taxicabs sometimes carry passengers who have been or are about to become interstate railroad passengers. The ordinances of the City of Chicago localize these taxicab operations, require the taxicabs to serve the general Chicago public, and preclude any contract or integration with railroads. Under *New York ex rel. Pennsylvania Railroad Company* v. *Knight*, 192 U. S. 21, the taxicab services of Yellow and Cab Sales are "an independent local service, preliminary or subsequent to any interstate transportation." Since the taxicab operations of Yellow and Cab Sales are not themselves interstate commerce, no question of monopolization or restraint of these local taxicab operations arises under the Sherman Act; and further, no charge is made in the complaint that such services are inadequate with respect to railroad passengers or discriminatory against them.

ARGUMENT

I

The operating companies' exclusive purchases of taxicabs from CCM do not violate the Sherman Act.

The charge of the complaint is that the operating companies will buy their taxicabs only from CCM. The complaint alleges:

> "That each such operating company will purchase and use as cabs only motor vehicles manufactured by CCM; and will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers" (par. 19(b), R. 8).

Although the operating companies allegedly will buy their taxicabs only from CCM, the complaint does not allege that CCM will not sell taxicabs to others. Exclusive purchases are therefore charged, but not exclusive sales.

The plaintiff claims that the interstate commerce which such exclusive purchases restrain, in violation of the Sherman Act, is the sales of taxicabs by manufacturers *other than CCM*, who are thereby excluded from the opportunity of selling their taxicabs to the operating companies.

Two preliminary observations are pertinent. First. The "Nature of the Trade and Commerce Involved", alleged in Part III of the complaint does not refer to sales of manufacturers other than CCM (R. 3-4); the only sales to which Part III refers are the sales of CCM (Par. 7, R. 4). Part V of the complaint, "Offenses Charged", does allege that the operating companies "will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers" (par. 19 (b), R. 8); and Part VI mentions, as one of the claimed "Effects of the Conspiracy", that "other manufacturers of motor vehicles capable of use as cabs have been excluded from the opportunity of competing for" sales to the operating companies (par. 53 (3), R. 17): These references to other manufacturers do not, however, define the commerce claimed by the complaint to be restrained; indeed no allegation is contained anywhere in the complaint that such sales of the other manufacturers are interstate. Whatever the common knowledge may be of interstate sales of motor vehicles, the point of importance is that the complaint is not based on interstate sales by other manufacturers; its attack is centered on the operations of the operating companies, with some attempted linkage to the interstate sales of CCM. Second. The plaintiff's brief (pp. 27-31) makes separate arguments as to "sales" by manufac-

turers to the operating companies and "purchases" by the operating companies from manufacturers. Analytically, however, these are not separate matters, but are only different methods of statement that manufacturers other than CCM are, as a result of the exclusive purchase arrangement between the operating companies and CCM, excluded from selling taxicabs to the operating companies.

Assuming, however, without conceding, that the allegations of the complaint extend to interstate sales of manufacturers other than CCM, the question posed is whether the exclusive purchase arrangement between the operating companies and CCM violates the Sherman Act because it results in an exclusion of other manufacturers from sales to the operating companies.

Exclusive dealing arrangements are not precluded *per se* by the Sherman Act. *Fed. Trade Comm.* v. *Curtis Publ. Co.*, 260 U. S. 568; *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, 728-729; *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344. See *Associated Press* v. *United States*, 326 U. S. 1, 14-15.

Nor are exclusive dealing arrangements, which are necessarily implied among parent-subsidiaries or affiliates in a vertically integrated enterprise, violations *per se* of the Sherman Act. *United States* v. *Winslow*, 227 U. S. 202, 217; *United States* v. *U. S. Steel Corp.*, 251 U. S. 417.

Such exclusive dealing arrangements are readily inferable among the components of the whole in an expanding integrated enterprise, but of course do not constitute violations *per se* of the Sherman Act. *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502 510 (E. D. Pa.) appeal dismissed, 257 U. S. 664; *United States* v. *Great Atlantic & Pacific Tea Co.*, 57 F. Supp. 626, 642 (E. D. Ill.); *Coca Cola Bottling Co.* v. *Coca Cola*, 269 Fed. 769 (D. Del.).

In *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), now pending before this Court on ap-

peals by all parties, the major national motion picture companies required their subsidiaries, which owned 3,000 out of 18,000 theatres in the United States, to exhibit the pictures which the national motion picture companies produced. The Expediting Court (Judges A. N. Hand, Goddard and Bright) held that this did not violate the Sherman Act, notwithstanding that in some cities, including Philadelphia and Cincinnati, all first-run theatres were owned by such subsidiaries. Judge Hand wrote for the Expediting Court:

> "The only pictures that the present sole exhibitors in such localities could control would be their own, which they can always exhibit freely in their own theatres" (p. 354).

Exclusive dealing arrangements conflict with the Sherman Act only when they are "unreasonable" or when "an injury has been done to the public". *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 500-501; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 458. Cf. *Fed. Trade Comm.* v. *Gretz*, 253 U. S. 421, 428; see *United States* v. *Associated Press*, 326 U. S. 1, 14, 23, 27. In the *Associated Press* case, Judge Learned Hand wrote for the Expediting Court (52 F. Supp. 362, 369 (S. D. N. Y.), affirmed by this Court (326 U. S. 1):

> "When a situation does not fall within one of [categories earlier described by Judge Hand] a court is forced to weigh the advantages gained by the combination against the injury done to the public, and apparently in this connection the public is the 'purchasers or consumers' whom the combination will deprive 'of the advantages which they derive from free competition'."

This test of reasonableness or public injury likewise prevails in the case of the acquisition by one corporation of the stock of another for the expressed or implied purpose of effecting an exclusive arrangement between the

acquired and the acquiring corporation. Compare, for example, the cases under Section 7 of the Clayton Act. *International Shoe Co.* v. *Fed. Trade Comm.*, 280 U. S. 291, 298; *V. Vivaudou Inc.* v. *Fed. Trade Comm.*, 54 F. (2d) 273 (C. C. A. 2); *United States* v. *Republic Steel Corp.*, 11 F. Supp. 117 (D. Ohio).

The only substantial impact of the operating companies' exclusive purchases of taxicabs from CCM is the use of such taxicabs in the localities served by the operating companies.* The exclusion of other manufacturers from sales of "motor vehicles for use as cabs" in such localities (as a result of the operating companies' exclusive purchases from CCM) is an unsubstantial and incidental impact, since this manufacturing industry is national in scope and CCM is not a national monopoly. The volume of "interstate" sales must, from the manufacturers' standpoint, be viewed nationally since their sales are national. The operating companies' exclusive purchases from CCM are negligible in comparison with the total national sales of all manufacturers, and "it is not reasonable to infer that the public interest has been appreciably affected" by such exclusive purchases. *United Mine Workers of America* v. *Coronado Coal Company*, 259 U. S. 344, 412; *Glenn Coal Co.* v. *Dickinson Fuel Company*, 72 F. (2d) 885, 889 (C. C. A. 4); *Pearsall Butter Co.* v. *Fed. Trade Comm.*, 292 Fed. 720 (C. C. A. 7). The complaint does not allege that CCM is a national monopoly, and the plaintiff so concedes in this Court (Pltff's. Br. p. 21), as in the District Court.** Indeed, as a matter of common knowledge,*** it is an extremely small manufacturer in relation to the major motor vehicle manufacturers.

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* Compare the quotation on the preceding page, from Judge Hand's opinion in the *Associated Press* case.

** The plaintiff's brief in the District Court stated: "The complaint does not charge CCM with a monopoly of either the manufacture or sale of all cabs throughout the United States."

*** See also Accomplishment Report for year 1942, ODT, Division of Local Transport.

The substantial impact on the public in the localities which the operating companies serve, occasioned by the operating companies' exclusive purchases from CCM, is not the purchase but the use of such taxicabs. It is not the purchase because such taxicabs are not bought for resale; it is the use, since the operating companies' use of the taxicabs constitutes the service to the public.

This use is, however, subject to the local regulatory control of the City of Chicago. (The other cities mentioned in the complaint are considered at pages 16-17 below.) That local control has been exercised by a series of comprehensive ordinances, the scope of which has been indicated in the statement above (pp. 3-6). These ordinances control the physical requirements of taxicabs, as, for example, "the number, kind, type of equipment * * * the color scheme"* "the color scheme and character of equipment",** "physical and mechanical standards for taxicabs and their appurtenances",*** They also control and establish the rates.****

This comprehensive control by the City of Chicago precludes any public injury from any exclusive purchases of cabs by the operating companies from CCM. The quality of taxicabs used by the operating companies is subject to comparison by the City of Chicago with that of taxicabs used elsewhere in the United States. Similarly, in the establishment by the City of Chicago of rates for taxicab

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* Paragraph 2 of Ordinance of September 25, 1929, Appendix A.

** Section 6 (6) of Ordinance of May 18, 1934, Appendix B.

*** Section 12 (c) idem.

**** Section 4 of the Ordinance of May 18, 1934, Appendix B, provides:

"The council from time to time may establish by a general ordinance just and reasonable rates and charges uniform as to all taxicabs operated within the city. * * *

"* * * * until such time as the council shall establish by a general ordinance other rates and charges for the transportation of passengers and their baggage by taxicabs, the licensee agrees to abide by the following schedule of rates and charges, which is hereby declared to be just and reasonable." (Then follow specified rates and charges.)

service, the price of such taxicabs may be compared with the price of taxicabs produced by other manufacturers throughout the United States. Contrast *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 500-501.

Only if CCM were a national monopoly could it circumvent the regulatory control of the City of Chicago. If CCM were a national monopoly, it could, by possibility, exert the force of such national monopolization to preclude the physical, price and other comparisons by the City of Chicago. (Compare *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn.)). But that is not this case. CCM is concededly not a national monopoly, but an extremely small manufacturer in relation to the major automobile manufacturers.

The City of Chicago has the power, delegated to it by the State of Illinois, to license and control the use of its streets and the operation of taxicabs on them.* This local power is similar to the local power to grant franchises, including exclusive franchises, to public and quasi-public service enterprises such as street railways, buses, telephones, water works, ferries, and toll bridges.** The City of Chicago might under such power grant an exclusive franchise to operate taxicabs to a single cab manufacturing company; and in such case the Sherman Act would not apply, since any rights and restraints arising from such exclusive franchise would flow from local regulation. *Parker* v. *Brown*, 317 U. S. 341; *Field* v. *Barber Asphalt Paving Company*, 194 U. S. 618. In the instant case, the taxicab licenses of the City of Chicago to Yellow and Checker were issued and reissued on the basis of the comprehensive disclosures and investigations required by the

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* *Smith-Hurd* Ill. Ann. Stats., Ch. 24, Secs. 23-8, 23-10, 23-27, 23-51, 23-78; *People* v. *Thompson*, 341 Ill. 166; *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652 (Appendix E).

** *People* v. *City of Chicago*, 349 Ill. 304, 326, 182 N. E. 419.

ordinances.* These licenses were issued in 1929, with provision for annual renewal; were reissued in 1934 for the period through 1940; were extended in 1937 for the period through 1945; and were again extended in 1945 for the period through 1950. This issuance, reissuance and extension of licenses to Yellow and Checker constitutes in effect a local legislative reaffirmation of the propriety of their exercise by Yellow and Checker, notwithstanding the common ownership alleged in the complaint.

The purchase and use of taxicabs in Chicago is, therefore, a local matter "which may appropriately be regulated in the interests of the safety, health and well being of local communities, and which because of its local character, and the practical difficulties involved, may never be adequately dealt with by Congress", and "because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause" (*Parker* v. *Brown*, 317 U. S. 341, 362).

While Chicago is the focal center of the plaintiff's attack, similar licensing conditions prevail in the other cities mentioned, New York, Pittsburgh and Minneapolis.** Concerning those cities, it should be observed that in New York only 2,000 licenses, out of 13,000 outstanding licenses, are held by a controlled operating company (R. 7); that the number of taxicabs in Pittsburgh is not mentioned in the complaint; and that the controlled operating company in Minneapolis, which owns only 125 taxicabs, was not acquired, but was organized by Parmelee (R. 9). Even

* Paragraph 3 of Ordinance of September 25, 1929, Appendix A; Section 8-10 of Ordinance of May 18, 1934, Appendix B.

** Administrative Code of the City of New York (Chapter 929, Laws of 1937, Sec. 436-2.0; Ordinance of the City of Minneapolis, Minnesota, approved March 28, 1947; Public Utility Law of Pennsylvania, approved May 28, 1937, as amended; Bus and Taxicab Regulations issued by the Pennsylvania Public Utility Commission, effective April 15, 1946.

aside from the regulatory licensing conditions applicable in these cities, comparable to those in Chicago which have already been discussed, the defendants' operations in New York, Pittsburgh and Minneapolis do not achieve the percentages or numbers required to constitute monopolization. *United States* v. *Aluminum Co. of America*, 148 F. (2d) 416, 424 (C. C. A. 2); *Standard Oil Company (Indiana)* v. *United States*, 283 U. S. 163, 176, 179; *United States* v. *U. S. Steel Corporation*, 251 U. S. 417.

The cases on which the plaintiff relies, do not concern the extent to which exclusive purchasing arrangements are reasonable or permissible within the public interest, but are cases of price fixing* and specific restrictive practices imposed by horizontal combinations.** Nor does the plaintiff's attempted analogy to section 3 of the Clayton Act afford any basis for evaluating the reasonableness of, or the public interest affected by, exclusive purchasing arrangements; and, of course, the allegations of the complaint are not within, and this action is not based on, section 3 of the Clayton Act.

II

Yellow and Cab Sales are not required to compete with Parmelee for contracts with railroads.

The complaint charges that "Yellow and Cab Sales will not attempt to compete with Parmelee for contracts with railroad or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago" (par. 19 (c), R. 8). The complaint also alleges that "Parmelee operates 85 *non-licensed* cabs in transferring passengers between railroad stations in Chicago" (par. 14, R. 6).

* *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 48-49.

** *Montague & Co.* v. *Lowry*, 193 U. S. 38; *Eastern States Lumber Dealers' Assn.* v. *U. S.*, 234 U. S. 600, 611; *Fashion Originators' Guild Inc.* v. *F. T. C.*, 312 U. S. 457; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173.

The plaintiff argues that such lack of competition by Yellow and Cab Sales for the Parmelee contracts (which are to carry only railroad passengers only between railroad stations), is a restraint prohibited by the Sherman Act.

This argument breaks against the ordinances of the City of Chicago. Yellow and Cab Sales operate their taxicabs as "licensees" of the City of Chicago, subject to its ordinances (R. 6). Parmelee has no licenses from the City of Chicago, and the "cabs" which it operates pursuant to contracts with the railroads are "unlicensed" (R. 6). Section 4 of the ordinance of the City of Chicago of May 18, 1934,* provides:

> "*Every person* shall be entitled to the service of the *licensee* at the established rates and charges between *any two points* within the corporate limits of the city."

The duties imposed by this ordinance on Yellow and Cab Sales are to carry "every person" to whatever destination he chooses within Chicago. The contract between Parmelee and the railroads, however, restricts transportation by Parmelee only to railroad passengers and only between railroad stations. Since the duties imposed by ordinance on Yellow and Cab Sales to carry "every person" anywhere within Chicago cannot, as in the case of Parmelee, be restricted by contracts with railroads to the carriage of only railroad passengers only between railroad stations, the plaintiff's claim of a violation of the Sherman Act has no basis.

Additionally, subject to the ordinances binding them, Yellow and Cab Sales do offer their services to all railroad passengers at Chicago railroad stations (pars. 4-6,

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* Appendix B.

of complaint, R. 3-4) and therefore in that respect do compete with Parmelee.*

The plaintiff's suggestion (Pltf.'s Br., p. 45) that although "general taxicab service and between-station service may be distinct fields of operation", "a company engaged in one field is a natural potential competitor for the other", is neither based on any allegation of the complaint, nor, under the allegations of the complaint, forms the subject of any violation of the Sherman Act. There is no suggestion anywhere in the complaint that Yellow or Cab Sales (or their predecessors) have ever had contracts with the railroads; nor that they have ever contemplated obtaining such contracts; nor, indeed, that they have ever engaged or contemplated engaging in any business other than the general taxicab business.** On the contrary, the allegations of the complaint affirmatively show that Yellow and Cab Sales (and their predecessors) have always been in the general taxicab business (R. 4-5), and Parmelee's exclusive contracts with the railroads are of long standing.*** The argument of the plaintiff that by possibility Yellow and Cab Sales might change the char-

* The further facts presented to the District Court which, located in Chicago, it might notice as a matter of common knowledge, were these: Parmelee's "cabs" are actually limousine-coaches carrying seven or ten passengers. No one person may alone hire such limousine-coaches and no one can travel in such a coach to the destination of his choice; coach passengers must await appropriate loading of coaches and can travel only between railroad stations. It was with respect to this service that the District Court said:

> It is "a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered" (R. 27).

** In *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, competition actually threatened was forestalled, and the plaintiff's quotation in footnote 21 at p. 45 of its brief must be read against the facts of such threatened competition.

*** The validity of exclusive contracts such as Parmelee's with the railroad companies has repeatedly been sustained. *Donovan* v. *Pennsylvania Company*, 199 U. S. 279; *Delaware, Lackawanna & Western Railroad Company* v. *Morristown*, 276 U. S. 182; *Black and White Taxicab and Transfer Company* v. *Brown and Yellow Taxicab and Transfer Company*, 276 U. S. 518. In the *Donovan* case, Parmelee Transfer Company, a predecessor of Parmelee, transported railroad passengers by omnibus between the Pennsylvania Company's railroad station and other railroad stations in Chicago pursuant to a like exclusive contract with the Pennsylvania Company.

acter of their business so as to compete with Parmelee for exclusive contracts with railroads is, accordingly, mere conjecture and without foundation. Affiliates engaged in different businesses are not required to compete with each other. *Alexander Milburn Co.* v. *Union Carbide & Carbon Corp.*, 15 F. (2d) 678 (C. C. A. 4), certiorari denied 273 U. S. 757.

III

Neither the assertion by Yellow and Checker of their license and priority rights, nor the taxicab operations conducted by Yellow and Cab Sales in the City of Chicago violates the Sherman Act.

The basic charge of the complaint is that Yellow and Checker, by asserting their license and priority rights, excluded others from possible participation in the limited number of outstanding licenses (R. 8, 17).

This claimed violation of the Sherman Act runs counter, however, to two fundamental conceptions. First, the Sherman Act does not operate against any rights or restraints flowing from state or local regulation; and second, the commerce concerned is local and not interstate commerce.

A

The validity of Yellow and Checker's license and priority rights under the ordinances of the City of Chicago has specifically been established by the Supreme Court of Illinois in *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652, Appendix E; and that decision also held that no monopoly existed, because the number of licenses and the rights of the licensees were subject to the control of the City of Chicago.

The license rights of Yellow and Checker derive from these ordinances; and any exclusion of other potential li-

censees, resulting from the assertion by Yellow and Checker of their license and priority rights, accordingly flows from these ordinances. It is established that the Sherman Act does not operate against any such rights or restraints flowing from state or local regulation. In *Parker* v. *Brown*, 317 U. S. 341, a program for the marketing of raisins sold in interstate commerce and for regulating their prices, pursuant to the California Agricultural Prorate Act, was held not to violate the Sherman Act. Mr. Chief Justice Stone said:

> "But it is plain that the prorate program here was never intended to operate by force of individual agreement or combination. It derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command.
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> * * *
>
> "It is the state which has created the machinery for establishing the prorate program. Although the organization of a prorate zone is proposed by producers, and a prorate program, approved by the Commission, must also be approved by referendum of producers, it is the state, acting through the Commission, which adopts the program and which enforces it with penal sanctions, in the execution of a governmental policy" (p. 352).

Such State regulations, said Mr. Chief Justice Stone,

> "* * * are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of safety, health and well-being of local communities, and which, because of its local character, and the practical difficulties involved, may never be adequately dealt with by Congress" (p. 362).

In *Field v. Barber Asphalt Paving Co.*, 194 U. S. 618, a municipality which required paving to be done with Trinidad Lake Asphalt, thereby excluding the sale of all other kinds of asphalt by other contractors, was held not to violate the Sherman Act. Mr. Justice Day said for this Court:

> "Further objection on Federal grounds is urged, in that the specification of Trinidad Lake Asphalt for this improvement is in violation of the interstate commerce clause of the Constitution of the United States, and of the so-called Sherman Act of July, 1890. The right to provide for this paving was vested by the Missouri statute in the board of aldermen. The right to select the material for the paving was vested in that body; they saw fit to choose Trinidad Lake asphalt for the paving. Their right so to do, under the charter powers of such cities as Westport, notwithstanding competitive bidding is thereby rendered impossible, has been sustained by the Supreme Court of Missouri" (p. 622).
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> "In the present case it may be that the use of this kind of asphalt, under municipal authority conferred by the State, will in a limited degree affect interstate commerce, but it certainly is not one of those direct interferences with the power over, and express control of, the subject given by the Constitution to Congress.
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> "The attempt to invoke the provisions of the Sherman Act in this case is equally unavailing" (p. 623).

The plaintiff argues that it does not attack the right of the City of Chicago to issue taxicab licenses but seeks only to preclude Yellow and Checker from exercising their rights under such licenses. This argument is manifestly specious. If the licenses granted to Yellow and Checker could so be abrogated, the right of the City of Chicago to

issue licenses would to that extent be restricted. Since the plaintiff concedes that the Sherman Act cannot be used to restrict such right of the City of Chicago, it cannot accomplish this result indirectly. Moreover, the license rights of Yellow and Checker which the plaintiff seeks to abrogate are the very rights which the Illinois Supreme Court specifically has sustained. *Yellow Cab Co.* v. *City of Chicago*, 71 N. E. 2d 652, Appendix E.

B

The complaint alleges that the defendants conspired to restrain and monopolize "interstate trade and commerce" in the business of furnishing cab service for hire in Chicago. The plaintiff concedes that the commerce which is the subject of the claimed violations is not interstate railroad transportation; this concession obviously results from the utter lack of any suggestion that the defendants have in any respect monopolized or restrained railroad transportation. The plaintiff also concedes that, disconnected from interstate railroad transportation, the general taxicab business in Chicago is local commerce. The question thus presented is— Does the Chicago taxicab business of Yellow and Cab Sales become interstate commerce because or to the extent that some of their taxicabs sometimes carry passengers who have been or are about to become interstate railroad passengers?

The taxicabs of Yellow and Cab Sales do not cross state lines; on the contrary, they are confined by ordinance to transportation "between any two points within the corporate limits of the City."* None of the taxicabs of Yellow and Cab Sales serves only railroad passengers; on the contrary, each is required by ordinance to serve "every person" within the limits of Chicago.** No con-

* See Section 4 of Ordinance of May 18, 1934, Appendix B.

** Idem.

tractual or other arrangements with respect to taxicab service exist between Yellow or Cab Sales and any of the railroads; on the contrary, the duties which are imposed on licensees by ordinance, to carry "every person" to whatever destination he chooses within Chicago, preclude any such arrangement. Taxicab fares are paid to taxicab drivers, and not to any railroad, and uniform rates for taxicab passengers are fixed by the City of Chicago.* The carriage by any taxicab of a person who has been or is about to become a railroad passenger is entirely casual and accidental; and the number of such trips constitutes an extremely small part of the total taxicab trips of the public in chicago.**

Railroad passengers who do not use taxicabs to go to or from Chicago railroad stations may use trolley cars, subways, buses, private automobiles, or other means of conveyance. Any conteption, therefore, that the taxicab operations are part of the interstate commerce of railroad passengers within the meaning of the Sherman Act immediately carries with it the contention that such trolley cars, subways, buses, private automobiles, or other means

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* Idem.

** The District Court said:

> "The following facts either appear in the complaint, are of common knowledge, or have been admitted in briefs and arguments. A railroad passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the City. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate, contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies" (R. 23-24).

of conveyance are likewise part of the interstate commerce of railroad passengers within the meaning of that Act. The District Court said:

> "* * * in Chicago at least two of the largest stations are specially designed to provide its passengers with easy means of access to the elevated lines. A number of railroad depots also provide accommodations for private automobiles. Stations in other cities are specially designed to furnish railroad passengers with access to large hotels. Can it be logically urged that because of these arrangements for the convenience of the passengers, the elevated lines or such hotels are engaged in interstate commerce" (R. 23)?

This Court has stated that: "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business". *Swift and Company* v. *United States*, 196 U. S. 375, 398; *Shanks* v. *Delaware, Lackawanna and Western R. R.*, 239 U. S. 556, 558; *Chicago, Burlington & Quincy R. R.* v. *Harrington*, 241 U. S. 177, 180.

In *New York ex rel. Pennsylvania Railroad Company* v. *Knight*, 192 U. S. 21, the Pennsylvania Railroad Company maintained a taxicab service to transport its railroad passengers between their homes in New York City and the Company's stand at the Twenty-Third Street Ferry in New York City, for which a separate charge was made. Sustaining a franchise tax by the State of New York on such taxicab operations, Mr. Justice Brewer said for this Court:

> "As we have seen, the cab service is rendered wholly within the state, and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto" (p. 27).

> "If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate

transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce? And where will the limit be placed?

"We are of opinion that the cab service is an independent local service, preliminary or subsequent to any interstate transportation. * * *" (p. 28).

Although the precise point of decision in the *Knight* case was the validity of the state tax, the basis of decision was that such taxicab service did not constitute interstate commerce; and this basis of decision was in effect adopted by this Court in later cases under the Sherman Act. In *Stafford* v. *Wallace,* 258 U. S. 495, 528, this Court said of the taxicab service in the *Knight* case:

"This court [illegible] that because it was independent of the railroad transportation, and not included in the contract of railroad carriage, it did not come within interstate commerce."

Similarly, in *Swift & Co.* v. *United States,* 196 U. S. 375, 405, this Court considered the *Knight* case as involving an "independent matter" from railroad transportation.

United States v. *Capital Transit Company,* 325 U. S. 357, referred to by the plaintiff, presented a different question. There a bus company maintained local transportation as an integrated part of its District of Columbia-Virginia bus service. Joint fares were prescribed by the Interstate Commerce Commission in connection with the District-Virginia transportation, and discrimination against other District-Virginia bus carriers was prohibited. In the instant case, there is neither connection between the defendant taxicab companies and any rail-

road, nor discrimination by the defendant taxicab companies against any railroad or railroad passenger.

The cases referred to by the plaintiff under the National Labor Relations Act, the Fair Labor Standards Act, and other statutes, are inapplicable. None of these cases undertook to decide that the acts under consideration were themselves interstate commerce, but only whether they "affected" interstate commerce. In the instant case, however, the plaintiff posits the taxicab operations as the "interstate commerce" which is the subject of this action. It is "treacherous business" to translate "an implication drawn from the special aspects of one statute to a totally different statute" (*Federal Trade Commission* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 353); and "Thus, while a phase of industrial enterprise may be subject to control under the National Labor Relations Act, a different phase of the same enterprise may not come within the 'commerce' protected by the Sherman Law" (*Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 521).

Since the taxicab operations of Yellow and Cab Sales are not themselves interstate commerce, no question of monopolization or restraint of those local taxicab operations arises under the Sherman Act. But even beyond this, the complaint contains no allegations that any restraints arising from taxicab service are directed against railroad passengers. No charge is made that such services are inadequate with respect to railroad passengers or discriminatory against them.

Conclusion

This Court noted probable jurisdiction on the defendants' motion to dismiss or affirm.

For the reasons stated the judgment of the District Court should be affirmed in its entirety; and, in respect of the partial judgment for which the defendants alterna-

tively moved (R. 20), the judgment of the District Court should be affirmed as to that part of the complaint which is based on the furnishing of cab services for hire in Chicago.

Respectfully submitted,

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APPENDICES TO BRIEF FOR APPELLEES

Appendix A.

ORDINANCES OF SEPTEMBER 25, 1929.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. That the following paragraphs be added to Chapter LXXXV of The Chicago Municipal Code of 1922, under Article 1, to be known as Section 3916-A:

"Paragraph 1. No taxicab license, as hereinafter defined, shall hereafter be issued unless the Public Vehicle License Commission, as hereinabove created, after a hearing, shall by resolution declare that public convenience and necessity require the proposed taxicab service for which application for a license is made: Provided that such declaration of public convenience and necessity shall not be necessary;

(a) For the licensing of the same number of taxicabs licensed for operation and operated by the applicant under the same name and colors on the 15th day of September, A.D. 1929, or the renewal of the same number of licenses annually thereafter; or

(b) For the renewal of licenses to the applicant for the number of taxicabs of the applicant, for which the said Public Vehicle License Commission shall have at any time prior to the date of application for such renewal, made a declaration of public convenience and necessity.

Paragraph 2. In determining whether public convenience and necessity require the licensing of such taxicabs for which application may be made, the Public Vehicle License Commission shall take into consideration whether the demands of public convenience and necessity require such proposed or such additional taxicab service within the City of Chicago; the financial

responsibility of the applicant; the number, kind, type of equipment, the schedule of maximum rates proposed to be charged, the color scheme to be used by the applicant; the increased traffic congestion and demand for increased parking spaces on the streets of the City which may result, and whether the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such additional license, and such other relevant facts as the Public Vehicle License Commission may deem advisable or necessary.

Paragraph 3. Any applicant for a taxicab license, *under the provisions of this article, shall make proper* application therefor on blanks to be furnished by the Public Vehicle License Commission, and immediately upon the filing of such an application, the Public Vehicle License Commission shall cause a notice to be published in one of the leading daily newspapers of the City of Chicago, which said notice shall be paid for in full by the applicant, and which said notice shall set forth the fact that the certain application has been filed for a taxicab license, the name of the applicant, kind of equipment and all other information from the said application, which said Public Vehicle License Commission may deem necessary, and notifying all holders of existing taxicab licenses that a public meeting will be held at a public place in the City of Chicago, to be designated by the Public Vehicle License Commission, at a time not less than five days nor more than fifteen days after the date of the first publication of said notice and said notice is to be published for three successive days. All holders of existing taxicab licenses shall thereupon be entitled to file any complaints and protest that said holders may see fit. At the time of the holding of the investigation and hearing with reference to whether the public convenience and necessity require the operation of such additional vehicle or vehicles covered in the application, the Public Vehicle License Commission shall consider all of the complaints and protests, and in conducting its hearings, shall have the right to call such witnesses as it may see fit. In all of such hearings the burden of proof shall be upon the applicant to establish by

clear, cogent and convincing evidence which shall satisfy the said Public Vehicle License Commission beyond a reasonable doubt, that public convenience and necessity require such operation of the vehicle or vehicles for which the said application has been made.

Paragraph 4. If the Public Vehicle License Commission finds from its investigation and hearing that the public convenience and necessity justify the operation of the vehicle for which license is desired, it shall notify the applicant of its finding. Within 60 days thereafter, the applicant shall furnish to the Public Vehicle License Commission any and all additional information which may be required, and if the said Public Vehicle License Commission then finds that the applicant is the owner and bonafide operator of the vehicle for which license is desired, and that such vehicle complies with all of the ordinances of the City of Chicago, and all of the rules and regulations enacted by the Public Vehicle License Commission, license shall thereupon be issued to the said applicant upon the payment of the proper license fee.

If the Public Vehicle License Commission finds from such investigation and hearing that the public convenience and necessity do not justify the operation of the vehicle for which license is desired, it shall forthwith notify the applicant of said finding.

Paragraph 5. The applicant shall regularly and daily operate his or its licensed taxicabs during each day of the licensed year to the extent reasonably necessary to meet the public demand for such taxicab service. Upon complete abandonment of taxicab service, for a period of ten consecutive days by an owner or operator of taxicab service, the Public Vehicle License Commission, upon hearing after five days notice to the said owner or operator shall thereupon recommend to the Mayor of the City of Chicago that the license of such owner or operator shall be revoked covering such taxicabs of the said owner or operator."

SECTION 2. This ordinance shall be in force and effect from and after its passage.

Appendix B.

ORDINANCE OF MAY 18, 1934

An ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Whenever used in this ordinance:

(a) the word "city" means the City of Chicago;

(b) the word "council" means the City Council of the City of Chicago;

(c) the word "taxicab" means any public passenger motor vehicle equipped with a taximeter and licensed as a taxicab;

(d) the word "taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers;

(e) the word "licensee" means every person, firm or corporation owning any taxicab and having filed with the City Clerk formal written acceptance of this ordinance, and

(f) the word "commission" or "commissioner" means the body or officer having supervision over taxicab operations in the city.

SECTION 2. Subject to the conditions and limitations of this ordinance, permission and authority are hereby granted to the licensees to operate taxicabs upon the public streets and other public ways within the corporate limits of the city for the term ending December 31, 1940 unless sooner terminated or revoked as hereinafter provided.

SECTION 3. In addition to all license fees every licensee shall pay to the city quarter-annually in advance the sum of $12.50 for each taxicab of the licensee as compensation for the use of the streets and other public ways by authority of this ordinance. The compensation herein provided for shall be paid on the first day of January, March, July and October of each calendar year, provided that every licensee who shall accept this ordinance in the year 1934 shall be obligated to pay said compensation beginning as of July 1, 1934 as if this ordinance had been accepted by said licensee on July 1, 1934.

SECTION 4. The council from time to time may establish by a general ordinance just and reasonable rates and charges uniform as to all taxicabs operated within the city. No licensee shall charge, demand, collect or receive greater or less or different rates of compensation for the service of said licensee than those established or fixed from time to time by a general ordinance. Every person shall be entitled to the service of the licensee at the established rates and charges between any two points within the corporate limits of the city.

Upon acceptance of this ordinance and until such time as the council shall establish by a general ordinance other rates and charges for the transporation of passengers and their baggage by taxicabs the licensee agrees to abide by the following schedule of rates and charges, which is hereby declared to be just and reasonable:

For the first one-third of a mile or fraction thereof for one person	15 cents
For each additional two-thirds of a mile or fraction thereof for one person	10 cents
For each additional person of the age of twelve years or more for the whole trip	5 cents
For each three minutes of waiting time or fraction thereof	10 cents

such waiting time shall include the time beginning ten minutes after call time at the place to which the taxicab has been called, when it is not in motion, the time consumed by unavoidable delays at street intersections, bridges or elsewhere and the time consumed while standing at the direction of a passenger.

Every passenger under twelve years of age when accompanied by an adult shall be carried without charge.

No licensee shall carry or permit to be carried in a taxicab more than five passengers of the age of twelve years or more at the same time.

Passengers shall be entitled to the conveyance of their ordinary hand baggage without charge. A fee of twenty-five cents may be charged for carrying a trunk, but no licensee shall carry or permit to be carried any trunk except inside of the taxicab.

SECTION 5. Every licensee shall pay each judgment or award rendered against such licensee by any court or commission of competent jurisdiction within sixty days after such judgment or award shall become final and not appealable.

No licensee shall work or employ any person to work as a driver of any taxicab operated by such licensee for more than twelve out of twenty-four consecutive hours.

The licensee shall obey all laws and ordinances relating to the operation of motor vehicles, taxicabs and the regulation of traffic and all lawful rules and regulations of the commission.

SECTION 6. Nothing in this ordinance shall be construed to limit the city in the exercise of its police powers and the city hereby expressly reserves the right to pass all ordinances and make all regulations affecting the licensee which may be necessary to promote or secure health, safety, morals, comfort, convenience and general welfare;

provided, however, that no ordinance or regulation shall authorize the issuance of any license for a taxicab nor shall any such license hereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of such license unless the commission, after a hearing, by resolution shall declare that public convenience and necessity requires additional taxicab service and provided further, that no license for a taxicab hereafter shall be issued or re-issued upon transfer or in the annual renewal of such license unless and until the applicant for such license shall have accepted this ordinance.

In determining whether public convenience and necessity requires the licensing of any taxicab the commission shall take into consideration:

1. the demand for such service;
2. the effect on traffic congestion;
3. whether the safe use of the streets for vehicular and pedestrian traffic will be impaired;
4. the financial responsibility of the applicant and the amount of reserves to be established for the payment of personal injury, death and property damage claims;
5. the wages or other compensation to be paid to or received by the driver of such taxicab;
6. the color scheme and character of equipment and
7. any other facts which the commission may deem relevant.

The commission shall hold public hearings from time to time for the purpose of considering any objections or evidence pertinent to the question of the public convenience and necessity for the issuance of licenses for taxicabs. Notices of such public hearings containing the time and place thereof and the names of applicants for licenses shall

be published in the official newspaper of the city. The commission may continue any public hearing from time to time without notice by publication.

SECTION 7. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for taxicab service. In the event that the service of any taxicab is discontinued excepting on account of strikes, acts of God or causes beyond the control of the licensee the commission may give written notice to the licensee to restore such taxicab to service and, if the same is not so restored within five days after such notice, the commission, in its discretion, may recommend to the Mayor that the license for such taxicab be revoked and the Mayor, in his discretion, may revoke same.

SECTION 8. For the purpose of enabling the city to inform itself as to the character and quality of service rendered the public and just and reasonable uniform rates of fare to be fixed from time to time by the council and for determining whether the licensee is maintained adequate reserves to meet personal injury, death and property damage claims, the city and the commission shall have access to the plant, equipment, apparatus and other property and the inventories, books, papers, accounts and records of all property and operations of the licensees at all reasonable times. Every licensee, at all times, shall keep in the city complete and accurate books and records of all property, operations, receipts and disbursements, in such form and detail as may be prescribed from time to time by the commission. Every licensee shall file with the commission semi-annually, before the first day of March and before the first day of September in each year, a true statement of all assets and liabilities, gross earnings, operating expenses and income of the licensee for the preceding six months ending December 31, and June 30, respectively and, whenever called upon by the city or the commission, shall file such other information as may be required by them

or either of them. All statements required to be filed pursuant to this ordinance shall be sworn to by the licensee or the duly authorized agents of the licensee.

Every licensee shall file with the commission an address in the city to which all notices required to be given to the licensee under this ordinance may be addressed. All such notices shall be deemed good and sufficient for all purposes when deposited in the United States mail in a post paid envelope addressed to the licensee at the address on file with the commission.

SECTION 9. In the event that the commission after investigation and hearing shall determine that any licensee has obtained any license for any taxicab by fraud or false representation or misstatement of fact pertinent to the question of whether public convenience and necessity required the issuance of such license or in case any licensee shall fail to carry out any promise made to the commission before the issuance of such license the commission may, in its discretion, revoke such license.

SECTION 10. In the event that any licensee shall make default in the observance or performance of any one or more of the agreements, conditions or obligations imposed upon such licensee by this ordinance and if any such default shall continue for a period of ten days after written notice thereof from the commission to the licensee citing the alleged default on the part of the licensee then in each and every such case the commission shall report the fact to the council and, in addition to all other rights and remedies of the city in such case, the council may by resolution terminate the permission and authority hereby granted to such licensee and thereupon the Mayor shall revoke all taxicab licenses held by such licensee.

SECTION 11. Immediately after this ordinance becomes effective the Mayor, with the approval of the council, shall

appoint a public vehicle license commissioner for a term of two years and until his successor is appointed and qualified. The commissioner, before he enters upon the duties of his office shall file a bond with good and sufficient surety or sureties to be approved by the council in the penal sum of $5,000.00 for the faithful performance of his duties and shall take and subscribe to the oath or affirmation required of city officers, which oath or affirmation shall be filed in the office of the city clerk.

The annual salary of the commissioner shall be $7,500.00. He shall have power to employ such assistants and employees as may be provided for in the annual appropriation ordinance.

SECTION 12. In addition to the power and authority heretofore given by ordinance to the commission and also in addition to the power and authority hereinbefore given, but not in limitation thereof, the commission shall have the following powers and duties:

(a) to make such investigations as may be necessary for the establishment of just and reasonable rates of fare and to make recommendations thereon to the council;

(b) to recommend to the council the number, location and capacity of cab stands;

(c) to recommend to the council physical and mechanical standards for taxicabs and their appurtenances;

(d) to make such investigations as may be necessary and to recommend to the council measures for the prevention of accidents;

(e) to adopt such rules and regulations as it may deem expedient for the enforcement of the provisions of this ordinance, and

(f) to exercise such other powers and perform such other duties as may be prescribed from time to time by the council.

On or before the first day of April in each year the commission shall submit to the council an annual report of its transactions for the preceding calendar year, together with such recommendations as it may deem necessary or proper.

SECTION 13. This ordinance shall be in full force and effect from and after its passage, provided one or more persons, firms or corporations shall within sixty days after the passage of this ordinance qualify as a licensee hereunder by filing with the city clerk formal written acceptance of this ordinance. The invalidity of any section or part of any section of this ordinance shall not affect the validity of any other section or part thereof.

Appendix C.

ORDINANCE OF DECEMBER 22, 1937.

"WHEREAS, the Public Vehicle License Commissioner has reported the result of investigation of conditions prevailing in the operation of taxicabs within the city and has determined that public convenience and necessity require that the number of taxicabs within the City of Chicago be reduced to 3,000; and

"WHEREAS, certain licensees under the ordinance of May 18, 1934, have agreed to surrender a sufficient number of taxicab licenses to effect a reduction of the number of taxicabs within the City of Chicago to 3,000;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. In the event that sufficient number of taxicab licenses shall be surrendered by licensees under the ordinance of May 18, 1934, to reduce the number of taxicabs within the City of Chicago to 3,000 on or before March 31, 1938, no taxicab license shall thereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of any such license or upon assignment of any such license or upon assignment of the right to apply for such license as hereinafter provided or upon revocation for cause or termination in any other manner of any such license.

SECTION 2. Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to

such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of licenses for taxicabs as provided by ordinance. As between such licensees who have so surrendered taxicab licenses and who have not released or waived their right to apply for their substitution as herein provided such licenses shall be issued ratably in the proportion which the number voluntarily surrendered by each such licensee bears to the number voluntarily surrendered by all other such licensees.

SECTION 3. Each taxicab license or the right to apply for such license shall be assignable subject to the power of the City of Chicago to determine the qualifications of the assignee to such license. No taxicab license shall be issued to any assignee unless and until such assignee shall have assumed all liabilities of the assignor arising from the maintenance and operation of any taxicab.

SECTION 4. Subject to the conditions and limitations of this ordinance and an ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner, passed May 18, 1934, and appearing in the Journal of the Proceedings of the City Council of that date at pages 2271 to 2273, both inclusive, the permission and authority granted to the licensees under said ordinance of May 18, 1934, to operate taxicabs upon the public streets and other public ways within the corporate limits of the city is hereby extended to December 31, 1945, unless sooner terminated or revoked as provided in said ordinance of May 18, 1934.

SECTION 5. Nothing in this ordinance shall be construed to abrogate or modify the ordinance of May 18, 1934, or any of its provisions except insofar as this ordinance is inconsistent with said ordinance of May 18, 1934, and except that the City Council may provide for the installation and operation of an electric call system for taxicabs for the purpose of reducing the number or capacity of cab-stands in the city.

SECTION 6. This ordinance shall be in full force and effect from and after its passage provided one or more licensee under the ordinance of May 18, 1934, shall within thirty (30) days after passage of this ordinance file with the City Clerk formal written acceptance of this ordinance and shall have surrendered at least 616 taxicab licenses.

Appendix D.

ORDINANCE OF JUNE 26, 1945.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 4 of the ordinance relating to taxicab licenses passed December 22, 1937, appearing on page 5027 of the Journal of Proceedings of the City Council of that date is hereby amended by striking out the year "1945" in line twelve and inserting in lieu thereof the year "1950".

SECTION 2. This ordinance shall be in full force and effect from and after its passage provided one or more licensees under the ordinance passed May 18, 1934, and appearing in the Journal of Proceedings of the City Council of that date on pages 2271 to 2273, inclusive, granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle commissioner, as amended, shall within 30 days after the passage of this ordinance file with the City Clerk formal written acceptance of this ordinance.

Appendix E.

SUPREME COURT OF ILLINOIS

Yellow Cab Company *et al.*, Appellees, v. The City of Chicago *et al.*, Appellants.

Docket No. 29686—Agenda 28—November, 1946.

Mr. JUSTICE FULTON delivered the opinion of the court:

This is an appeal from the action of the circuit court of Cook county, granting to appellees a permanent injunction restraining appellants from cancelling or causing to be cancelled any taxicab licenses of appellees pursuant to notices given to appellees by the public vehicle license commissioner of the city of Chicago as directed by resolution of the city council of the city of Chicago. Said injunction also restrained appellants from issuing or causing to be issued any permits or licenses pursuant to a resolution, order or ordinance of the city council of the city of Chicago, passed January 16, 1946, and restrained appellants from issuing any permits or licenses in excess of the total number of 3000 without first holding hearings with respect to the public convenience and necessity therefor and without first affording appellees an opportunity to apply for and obtain such licenses to the number thereof provided for in a previous ordinance of the city council, passed on December 22, 1937.

The validity of certain ordinances of the city of Chicago is challenged by the parties in this cause and the trial judge has certified that the public interest requires the appeal be taken directly to this court in view of the questioned validity of these municipal ordinances.

For a proper consideration and determination of the issues in this case it is necessary to review the action of the city of Chicago and of the appellees regarding the oper-

ation of taxicabs in that city during the past fifteen years. On May 18, 1934, the city council passed a comprehensive ordinance to regulate the operation of taxicabs in the city of Chicago. This ordinance provided for the issuance of licenses to operate taxicabs in the city for a term ending December 31, 1940, unless sooner terminated or revoked as provided in the ordinance. The ordinance provided for the payment of license fees and the establishment of taxicab rates to be charged uniformly by all taxicabs, limited the number of passengers to be carried in each cab, required the payment of judgments rendered for personal injury, property damage or wrongful death against any licensee, limited the hours of work of each driver and contained other provisions designed for the protection of the citizens of the city of Chicago. The ordinance also contained a provision that no licenses should be subsequently authorized except upon transfer to permit replacement of the taxicabs or in the annual renewal of such licenses unless the commissioner, after a hearing, found that public convenience and necessity required additional taxicab service. No new licenses could be issued to any licensee unless he accepted this ordinance. This comprehensive ordinance also established a basis for making a determination as to the necessity and public convenience requiring licensing of additional taxicabs and provided that in the event of discontinuation of service of any taxicab excepting on account of strikes, acts of God, or anything beyond the control of the licensee the commissioner might give notice to the licensee to restore such taxicabs to service and the failure to restore such service within five days after notice would give the commissioner the discretion to recommend to the mayor that the license be revoked and the mayor in his discretion might revoke the same. This ordinance provided that it should be in full force and effect from and after its passage, if one or more persons, firms, or corporations operating taxicabs should within 60 days, file with the city clerk formal written acceptance of the same. Both appellees filed acceptances thereof.

Based upon this ordinance, 4108 taxicab licenses were issued in the city of Chicago. The Yellow Cab Company received 2166 licenses and the Checker Taxi Company received 1500 licenses. Subsequent operation of taxicabs in the city of Chicago resulted in unprofitable operations from the standpoint of the drivers and the licensees, resulting in strikes and other violence on the city streets, and in 1937 it was determined that a reduction in the number of taxicabs operated in the city and an increase in the fares charged was in the public convenience and necessity. Thereafter on December 22, 1937, the city council passed an ordinance providing for a method of voluntary surrender by licensees of enough of their licenses to reduce the total from 4108 to 3000. This ordinance provided that in the event the number of authorized licenses should later be increased above the 3000 figure said licenses, to the number surrendered, should first be issued to licensees ratably in proportion to the number voluntarily surrendered by each licensee. The ordinance likewise provided that authority of the licensees to operate taxicabs under the 1934 ordinance be extended to December 31, 1945, provided the licensees accepted the terms of the 1937 ordinance.

The Yellow Cab Company voluntarily surrendered 571 of its licenses and the Checker Taxi Company surrendered 500 of its licenses. Other licensees surrendered the balance of the required reduction. The appellees and other licensees continued to operate under this 1937 ordinance. The evidence shows that in 1940 and in 1941 appellees replaced their taxicab fleets in the city with new equipment, but since that time due to economic restrictions occasioned by World War II they have been unable to obtain new equipment customarily used by them for taxicab purposes. The evidence shows that the average life expectancy of a taxicab in the city of Chicago is about three years and that those operated in the city by appellees at the time of the hearing in this case have exceeded their life expectancy by more than 1½ years.

With the end of the war it was thought that appellees and others would be able to replace their taxicab fleets with new equipment and on June 21, 1945, the city council passed an extension ordinance extending the term of the ordinance of 1937 for five years, ending December 31, 1950. This action of the city council was preceded by pledges made to the city by appellees that they would replace their fleets with new equipment as soon as possible.

On December 28, 1945, the city council passed a resolution reciting that demands for all forms of local transportation had increased on account of World War II and directed the commissioner to enforce the provisions of the 1937 and 1945 ordinances by compelling full operation of 3000 taxicabs in the city by January 15, 1946. In the event that full operation of said taxicabs could not be accomplished, the commissioner was authorized to take steps for licensing additional taxicabs in the city.

On January 16, 1946, the city council passed the following: "ORDERED, That the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs, and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally through the city.". On January 22, 1946, the commissioner addressed a letter to each of the appellees advising them that his office had surveyed their records and that the Yellow Cab Company had 234 taxicabs and the Checker Taxi Company had 87 taxicabs which had not been operating. He directed that they be placed in operation within five days or the licenses for said cabs would be cancelled.

Appellee Yellow Cab Company filed its complaint for injunction on January 24, 1946. Subsequently, appellee Checker Taxi Company was given leave to appear as a plaintiff. In their complaints as amended, appellees alleged the existence of the various ordinances and actions by the city council and the public vehicle license commissioner,

and in addition, alleged that they had invested several million dollars in taxicab equipment, real estate and property; had acquired contract rights; had complied with all ordinances; had given up licenses under the 1937 ordinance, and had ordered new fleets of taxicabs, relying on their contract rights. They also alleged that the action of the defendants in attempting to cancel their licenses and to issue additional permits, interfered with and violated their contract rights secured to them by the State and Federal constitutions, and would cause irreparable harm, injury and damage to their goodwill, business and investments, and that they had no adequate remedy at law.

The defendants filed a motion to dismiss the complaints and also filed answers to the complaints and amendments thereto. By these pleadings the defendants contended that the complaints were filed prematurely; that no cause of action existed at the time of filing the complaints; that a court of equity had no jurisdiction to restrain a legislative body from exercising its governmental or legislative functions; that the ordinances of 1934, 1937 and 1945, are void; that the city of Chicago does not have authority to prohibit, exclude or limit the number of motor vehicles for hire upon the streets without equal application to all citizens; that said ordinances in effect grant an absolute monopoly denying to all citizens the equal protection of the laws and are contrary to the public policy of the State of Illinois, and constitute class legislation; that said ordinances delegate legislative powers to unnamed individuals to arbitrarily determine if said ordinances would become a law at sometime in the future, and that said ordinances are *ultra vires*, because the city attempted to part with or abdicate its legislative and governmental powers.

After a hearing, the court enjoined the defendants as above set forth. From the evidence it appears that the appellees are unable to operate 321 taxicabs by reason of their inability to obtain repairs and replacement parts for said vehicles. This inability has been occasioned by the

economic restrictions incident to World War II and is beyond the power of appellees to remedy. Appellees operate only vehicles which have been specially constructed for taxicab service and do not use conventionally designed passenger automobiles. It further appears that appellees have made some effort to obtain standard passenger automobiles to replace their fleets, but that in the opinion of appellees and expert witnesses familiar with the maintenance of taxicab fleets, the use of conventionally designed automobiles would be impractical since it would complicate the maintenance of the taxicab fleets inasmuch as parts of one taxicab would not be interchangeable with other taxicabs and mechanics trained to service one make of vehicle could not satisfactorily and economically repair and service other makes of vehicles. It further appears that there are many individuals in the city of Chicago who have obtained on the open market conventionally designed passenger cars which they have converted to suitable taxicab use. It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1000 pounds more than the average passenger car.

The appellants contend in this court that:

1. The trial court has no jurisdiction to enjoin the exercise of the legislative, governmental, and discretionary functions of the city council and public officials.

2. The resolution of the city council requiring 3000 taxicabs be put into service on or before January 15, 1946,

is a valid and proper exercise of the legislative function of the city council.

3. The ordinance of January 16, 1946, authorizing and directing the public vehicle license commissioner to issue 250 permits for operation of taxicabs in the city of Chicago is valid and is a proper exercise of the legislative power of the city council.

4. The ordinances of the city of Chicago of May 18, 1934, December 22, 1937, and June 21, 1945, providing for the issuance of licenses and regulation of the taxicab business in the city of Chicago are null and void.

The appellees contend that the action of the trial court should be affirmed for the following reasons:

The inoperability of 321 taxicabs was beyond the control of appellees and, therefore, no action could be taken by appellants toward the cancelling of such licenses.

2. The action of the city council of January 16, 1946, in authorizing and directing the issuance of 250 permits for the operation of taxicabs in the city of Chicago is void because there is no finding that public convenience and necessity required the issuance of additional taxicab licenses; the ordinance is vague and uncertain, it is discriminatory, does not afford appellees the right to apply for permits or licenses in excess of the 3000 as guaranteed by the 1937 ordinance, and it violates and ignores appellees' contract rights secured by the Federal and State constitutions.

3. The ordinances of 1934, 1937 and 1945 are all valid and constitute binding contracts between the city and appellees.

As to the contention that the trial court had no jurisdiction to grant the injunction in this case on the ground hat it interfered with the exercising of legislative, gov

ernmental and discretionary functions of the city council, we cannot agree. Appellees have not sought to enjoin the city council from acting upon the question of taxicabs and their regulation. Appellees have merely sought to enjoin the city and its officials from taking action based upon ordinances or resolutions of the city council which appellees contend are invalid. The case of *Fletcher* v. *City of Paris,* 377 Ill. 89, cited by appellants and relied upon heavily by them, is authority for the proposition that equity cannot enjoin the holding of an election for the adoption of an ordinance nor can equity enjoin the passage of legislation, inasmuch as the holding of an election is the exercise of a political right and equity will not interfere in a case affecting the enjoyment of political rights where the holding of an election is a necessary step in the legislative process of adopting and bringing into existence a municipal ordinance. Likewise that case holds that inasmuch as the judiciary has no supervision of the legislative branch of the government, courts will not enjoin the passage of legislation, since the restricting power of courts is against the enforcement rather than the passage of unauthorized orders, resolutions or ordinances of municipal corporations. In the case at bar the injunction does not restrict the city council from enacting such ordinances or resolutions as it might care to regarding the regulation of taxicabs in the city of Chicago. It merely restricts the action of the city and the license commissioner, the city clerk and the mayor from taking certain action in the nature of enforcing ordinances or resolutions previously adopted by the city council.

Appellees in this case could properly maintain this action since they are in immediate danger of sustaining direct injury as a result of the enforcement and carrying out of the resolutions of the city council of December 28, 1945, and January 16, 1946. *Fletcher* v. *City of Paris,* 377 Ill. 89.

We cannot agree with appellants' contention that the city of Chicago cannot limit or restrict the number of taxicabs which are to be operated upon the streets of the city of Chicago. In the case of *People ex rel. Johns* v. *Thompson*, 341 Ill. 166, this court had before it for consideration the validity of an ordinance regulating taxicabs, passed September 25, 1929, which contained provisions similar in many respects to the ordinances of 1934, 1937 and 1945, the validity of which are questioned in this proceeding. In that case we upheld the validity of that ordinance and we stated, "The ordinance is not discriminatory on the ground that it singles out taxicabs for regulation and does not apply to private vehicles or other public vehicles drawn by horses. No one has any inherent right to use the streets or highways as a place of business. Where one seeks a special or extraordinary use of the streets or public highways for his private gain, as by the operation of an omnibus, truck, motorbus or the like, the State may regulate such use of the vehicle thereon or may even prohibit such use." We also held in that case that the power of the city to pass the ordinance in question had been authorized under the Cities and Villages Act then in force. We likewise held that the right to regulate includes the right to impose reasonable conditions and restrictions and that the power to regulate the use of streets by vehicles included the power to promote the general welfare and prevent accidents, and that the reasonableness of police regulation is not necessarily what is fairly appropriate under all circumstances. Certainly, the city of Chicago, having the right to regulate traffic and parking, to build bridges, viaducts, tunnels and sewers, to select streets for through or local traffic, to levy a city vehicle tax, to provide for the underground laying of wires or other facilities in the street and to provide for the general policing of the city, could, in the exercise of its powers conferred upon it by the legislature, properly determine the number of taxicabs which it would permit

to be operated in the city of Chicago. Any conclusion other than this would render ineffective the authorizations by the legislature to the city for the regulation of traffic and parking and the policing of the city. It is well known and this court takes judicial notice of the facts that there are numerous congested areas in the city of Chicago and that the very nature of the taxicab business contributes to this traffic congestion.

Appellants contend that the ordinances of 1934, 1937 and 1945, providing for the regulation and licensing of taxicabs in the city of Chicago, are invalid since such ordinances create, or attempt to create, a monopoly in the taxicab business in the city of Chicago. A careful study of the record indicates that at the time of the hearing in this cause there were 348 persons, firms or corporations, including appellees, holding licenses for the operation of 3,000 taxicabs in the city of Chicago. It is true that the vast majority of the 3,000 licenses are held by appellees, however no taxi operator and no person who desires to enter the taxicab business has, in this cause, complained of a monopoly. By these ordinances which are said to create a monopoly the city has reserved the right to fix fares and has the right to inspect the books and records of the various licensees. In addition, the city has reserved the right to issue, when authorized by general ordinance, additional licenses for the operation of taxicabs without the consent of any of the licensees. The sole restriction upon the city's right to issue additional licenses is that there shall be a finding of public convenience and necessity for the additional licenses. In the case of *Capitol Taxicab Co.* v, *Cermak*, 60 F. 2d 608, involving a similar ordinance, the court stated, "To the argument that the ordinance tends to create a monopoly, it is sufficient to answer that the city has not by its legislation surrendered its right to grant other and further certificates to all other applicants."

In the case at bar it is contended that the proviso contained in section 2 of the 1937 ordinance restricts the right of the city to issue additional taxicab licenses only to appellees. Section 2 of the ordinance of 1937 provides, "Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of licenses for taxicabs as provided by ordinance."

The ordinance of 1937 was a general ordinance of general application and merely attempted to provide a method for meeting the difficulties incident to the operation of taxicabs resulting from a period of economic depression. This ordinance was passed for the purpose of establishing proper regulation for the taxicab business in the city of Chicago during a critical period. Anyone holding a taxicab license could have surrendered the same and would have been given protection in regaining the license as afforded by this ordinance. It should be borne in mind that at the time the 1937 ordinance was passed, all taxicab licenses in the city of Chicago did not expire until December 31, 1940, and, therefore, the city of Chicago could not legally at that time reduce the number of taxicab licenses in the city by general ordinance. Conditions demanded that the number of licenses be reduced immediately and in order to secure their reduction, this ordinance granting

a preference to people who voluntarily surrendered licenses was enacted. The proviso giving to licensees surrendering taxicab licenses the right to regain their licenses, when the city of Chicago determines that additional licenses are to be authorized, merely gives to those people a preference for the period of 30 days after the publication of notice of public hearing upon the question of public convenience and necessity. Should these former licensees fail to apply for licenses within that 30-day period, then any one who desires to engage in the taxicab business can obtain a license providing he meets the general requirements of the ordinance. It is clear that no exclusive right to operate taxicabs has been granted to any person or corporation in expressed terms. The fact that appellees may be the only persons who surrendered taxicab licenses and are, therefore, the only persons entitled to the preference does not render the ordinance void, since the ordinance is of general application and since the preference in obtaining additional licenses is given only for a limited time and is based upon a valuable consideration. The city council of the city of Chicago, in the exercise of its legislative discretion, could well have determined that this ordinance was a proper exercise of its police power for the regulation of the taxicab business and the regulation of the traffic and congestion upon its streets. It is not the province of this court to inquire as to the wisdom of passing the ordinance. As long as the same does not violate any constitutional limitation, it is a valid enactment, though the courts might disagree with the wisdom of its provisions.

Appellants have also contended that the ordinances of 1934, 1937 and 1945 do not constitute contracts between the city and the operators of taxicabs, on the ground that the ordinances only confer a license and do not grant a franchise. A review of the authorities indicates that the distinction between a license and franchise has developed mainly by reason of the difference in the type of business performed. In the case of public utilities,

almost without exception, the grant of authority to them to conduct business within the limits of a city is referred to as a franchise. On the other hand, the right of a theatre, garage, restaurant, bowling alley and other businesses to engage in business is referred to as a license. Counsel have pointed out in great detail the distinction between franchises and licenses and have based much weight upon the fact that in a franchise the holder thereof can be compelled to operate his business while in the case of a license the licensee cannot be compelled to operate his business against his will. However, a review of the authorities in other States indicates that the terms "license" and "franchise" have been used often synonymously and that each State has a somewhat different meaning for the two terms.

The question to be determined in the case at bar is whether or not a licensing ordinance can constitute a contract between the city and the licensees. It is the opinion of this court that the licensing ordinances in the case at bar did create a contract between the city and the licensees. In the case of *Peoria Railway Co.* v. *Peoria Railway Terminal Co.*, 252 Ill. 73, we held that the privilege to use the streets of a city having been granted by an ordinance was not recoverable at the will of the city after it had been accepted by the licensee. We also held that where the license had been acted upon in a substantial manner and the revocation thereof would be inequitable, the same could not be revoked. This court in the case of *American Can Co.* v. *Emerson*, 288 Ill. 289, held that a license granted to a foreign corporation to do business in the State of Illinois constitutes a contract between the foreign corporation and the State of Illinois. It being the opinion of this court that the ordinances granting licenses to appellees and others operating taxicabs in the city of Chicago constitute a valid contract between appellees and the city of Chicago, and it being the opinion of the court that such ordinances are not

illegal as being beyond the power of the city to enact, we pass to the question of the delegation of power under the ordinances and we find that the delegation of power to the commissioner herein is not illegal. In the case of *People* v. *Thompson*, 341 Ill. 166, we considered the delegation of power under a similar ordinance regulating taxicabs in the city of Chicago and held that such delegation was proper. The only material difference between the provisions of the ordinance there questioned and the ordinances here, as to the delegation of power, is that in that case the power was given to a commission. We do not regard this difference as being material, inasmuch as proper standards for the action of the commissioner have been established by the ordinances.

Appellants have also contended that the action of the chancellor in holding invalid the order of the city council of January 16, 1946, authorizing the issuance of 250 taxicabs "permits," should be reversed. It is the opinion of this court that this action of the chancellor should likewise be affirmed. In view of the previous finding by the city that public convenience and necessity required the operation of 3000 taxicabs in the city of Chicago, and in view of appellees' admitted inability to keep all of their taxicabs in operation, due to conditions beyond their control, the city could properly provide for the issuance of temporary permits during a critical period when it was impossible to keep in operation all of the taxicabs theretofore licensed. However, the operation of such additional taxicabs authorized by the city council to bring the total number of cabs in operation to the necessary 3000 should be subject to the conditions of the general ordinance regulating the taxicab business in the city of Chicago. Certainly, the temporary permittees should be compelled to charge the same fares, submit to the same regulation and abide by the same safety precautions as provided in the general ordinance. The action of the city council of January 16, 1946, does

not in any way attempt to bring the temporary permittees under the same regulation as other taxicabs operating in Chicago, nor does this action provide for a termination of these permits when taxicab licensees are able to furnish the service which public convenience and necessity requires. The chancellor properly held this action of the city council invalid.

Appellees have raised many other arguments as to the validity and the propriety of the chancellor's action, which have received careful consideration, but, in view of our decision on the points heretofore discused, it would serve no useful purpose to further lengthen this opinion by a piecemeal discussion thereof. For the reasons which we have heretofore stated, the decree of the circuit court of Cook county is affirmed.

Decree affirmed.

Appendix F.

STATE OF ILLINOIS
COUNTY OF COOK. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY.

Yellow Cab Company, a Corporation, *Plaintiff,*
vs.
City of Chicago, a Municipal Corporation, *et al.*, *Defendants.*
No. 46C 943

OPINION BY JUDGE MICHAEL FEINBERG

Complainants, Yellow Cab Company and Checker Taxi Company seek in this representative action on behalf of themselves and others similarly situated an injunction against the City of Chicago, its Mayor, Public Vehicle License Commissioner and City Clerk to restrain them from issuing or causing to be issued any permits or licenses for operation of taxicabs in Chicago under an order or resolution passed by the City Council, January 16, 1946 and from cancelling two hundred thirty-four (234) taxicab licenses previously issued to complainant, Yellow Cab Company and eighty-seven (87) issued to the Checker Company as threatened in a notice to them, sent by the said license commissioner on January 22, 1946.

The hearing before this court is upon the motion of complainants for an injunction, pendente lite, based upon the sworn complaints, as amended, the answers of the defendants and the evidence heard on behalf of the respective parties.

On May 18, 1934 the Council passed a comprehensive ordinance to license and regulate the business of operating taxicabs in the City of Chicago and for the appointment of a Public Vehicle License Commissioner, whose duties and powers are defined by said ordinance.

In this ordinance we find the following provisions:

(a) Definitions of terms used in the ordinance;

(b) For the issuance of licenses to operate taxicabs for a term ending December 31, 1940 unless sooner terminated or revoked as therein provided;

(c) For the payment of a license fee for each taxicab;

(d) For the establishment of taxicab rates to be charged, uniform as to all taxicabs;

(e) Bars discrimination of taxi service to any person in the City limits;

(f) For limitation of the number of passengers to be carried in each cab;

(g) For the required payment of final judgments against licensees;

(h) For the limitation of hours of work of each driver out of each twenty-four hours of the day;

(i) For the reservation of authority to pass all ordinances and regulations affecting the licensees which may be deemed necessary to promote or secure the health, safety, morals, comfort, convenience and general welfare of the public;

(j) (Sec. 6). A proviso that no ordinance or regulation shall authorize the issuance of any license for a taxicab nor any license to be issued hereafter except upon transfer to permit replacement of the taxicab, or in the annual renewal of such license, unless the commission, after a hearing, by resolution shall declare that public convenience

and necessity requires additional taxicab service, and provided further that no license for a taxicab hereafter shall be issued or reissued upon transfer or in renewal of such license unless and until the applicant shall have accepted this ordinance;

(k) Sets up the basis of determination by the commission as to the necessity and public convenience requiring licensing of any taxicab, the qualification of the licensee, and the requirements that the commission hold public hearings upon notice given and the hearing of evidence and objections, if any, before making such determination as to public convenience and necessity;

(l) (Sec. 7). That in the event of discontinuance of service of any taxicab, excepting on account of strikes, acts of God *or causes beyond the control of the licensee*, the commission may given written notice to the licensee to restore such taxicab to service, and the failure to restore such service within five (5) days after notice, the commission in its discretion, may recommend to the Mayor that the license for such taxicab be revoked, and the Mayor in his discretion may revoke same;

(m) The licensee must keep accurate books and accounts of all property, operations, receipts, disbursements in such form and detail as may be required by the commission, the filing of semi-annual reports sworn to by the licensee and access to and inspection by the City and the commission of plants, property, equipment, apparatus, books, records and papers of the licensee;

(n) (Sec. 9). For false representation or fraud in procuring license the commission may in its discretion revoke such license;

(o) (Sec. 10). Failure of licensee to comply with any and all of the provisions of this ordinance and

such failure or default continue for ten (10) days after written notice thereof by the commission, the commission shall report the facts to the Council and the Council may, by resolution, terminate the permission and authority granted the licensee, and the Mayor shall revoke all taxicab licenses held by such licensee;

(p) (Sec. 13). That this ordinance shall be in full force and effect from and after its passage, provided one or more persons, firms or corporations, shall within sixty (60) days after its passage, qualify as a licensee by filing with the City Clerk formal written acceptance of this ordinance.

The complainants as well as many other persons, firms and corporations filed their acceptance of this ordinance as required, and from thence hitherto complainants have operated a fleet of taxicabs in the City. As appears from the sworn complaints and evidence heard, they have invested in property, taxicabs, equipment and incidentals, several millions of dollars. Their fleet of cabs consisted throughout the period of specially constructed cabs and design to insure safety, comfort and convenience for the riding public. They have met the requirements of the commission as to the character of the taxicabs, physical properties, and financial responsibility. It is alleged in the complaints that complainants have complied with all the provisions of this ordinance and subsequent ordinances hereinafter referred to.

Upon recommendation of the commission the Council authorized the issuance of four thousand one hundred eight (4108) taxicab licenses. Of this number Yellow Cab Company applied for and received licenses for twenty-one hundred sixty-six (2166) taxicabs and the Checker Company for fifteen hundred (1500) taxicabs.

On December 22, 1937 the Council passed an ordinance which determined that public convenience and necessity

required the operation of only three thousand (3000) taxicabs in the City and provided for the method of voluntary surrender by licensees of enough of their licenses to reduce the previous number from four thousand one hundred eight (4108) to three thousand (3000). It further provided (Sec. 2) that in the event the number of authorized licenses should later be increased above the three thousand (3000) that the increased number shall be first issued to licensees ratably in the proportion which the number voluntarily surrendered by each licensee bears to the number voluntarily surrendered by all licensees.

Authority of licensees to operate taxicabs under the 1934 ordinance was extended to December 31, 1945, provided the licensees accepted the terms of this ordinance.

In conformity with this letter ordinance Yellow Cab Company voluntarily surrendered five hundred seventy-one (571) of its taxicab licenses to the City and the Checker Company five hundred (500) of its licenses. The balance of the required reduction was supplied by the other licensees operating under the 1934 ordinance.

On May 24, 1945 the Council passed a resolution reciting that an emergency exists because the life expectancy of licensed taxicabs is about three (3) years, and that those operated in the city have exceeded it by more than one and one-half (1½) years due to the war conditions; that there is a critical need for replacement of such taxicab equipment, that practically all authorized three thousand (3000) taxicabs in the City required replacement, that there is no authorization by the War Production Board or Office of Defense Transportation for the manufacture of taxicabs for the years 1945 and 1946, and resolving that the War Production Board and the Office of Defense Transportation establish a program for the manufacture of taxicabs to meet the requirements of the Chicago taxicab licensees. A copy of the resolution was directed to be forwarded to said departments of the United States Government. . . .

On June 21, 1945 the Council passed an extension ordinance extending the term of the ordinance of December 22, 1937 for five (5) years ending December 31, 1950.

On December 28, 1945 the Council passed a resolution reciting that the demand for all forms of local transportation facilities has increased on account of the war and the reconversion from war to peace time economy, and that all public service facilities devoted to the transportation of passengers in the City should be furnished to the utmost capacity, and directing the License Commissioner to enforce the provisions of the taxicab ordinance and to compel full operation of three thousand (3000) taxicabs in the City, and that unless the licensees provide said three thousand (3000) taxicabs by January 15, 1946, he is authorized to take all steps necessary for the licensing of additional taxicabs in the City.

On January 16, 1946, the Council passed the following:—

> "ORDERED, that the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally throughout the city."

On January 22, 1946 the Commissioner addressed a letter to each of the complainants advising them that his office had surveyed their records of taxicabs and operations and directed that as to the Yellow Cab Company two hundred thirty-four (234) taxicabs and as to the Checker Company eighty-seven (87) taxicabs listed in the letter, which had not been operated, be placed in operation within five (5) days from said date or the licenses for said cabs would be cancelled and issued to others as provided in the resolution of December 28, 1945.

The passage of the resolution of December 28, 1945, the letter of the commissioner of January 2, 1946, the resolu-

tion or order of the Council of January 16, 1946 and the letter of the Commissioner of January 22, 1946 led to the application for the injunction prayed for in the complaints herein.

An opinion written by the Corporation Counsel of Chicago to the City Council of Chicago, dated September 11, 1945, was submitted to this court on the hearing without objection by the defendants, and was referred to by both sides upon the hearing. The opinion was requested by the chairman of the sub-committee on local transportation of the City Council of Chicago. The opinion appears in the files of the office of the Corporation Counsel of Chicago and is therefore a public record. As such, so far as it has a material bearing upon the issues raised by the pleadings, is without objection properly considered in evidence as a public record. Chapter 51, Sections 14 and 18, Revised Statutes of Illinois. *Carlin* v. *C. & W. I. R. R. Co.*, 297 Ill. 184 at pp. 189-190.

In the opinion referred to, the Corporation Counsel reviewed for the committee on transportation the existing ordinances of Chicago affecting the operation of taxi cabs in the City, the information gathered by the fact-finding departments of the City of Chicago in connection with the operation of taxi cabs in Chicago as well as the transportation problems confronting the City of Chicago, and warned the City Council in no uncertain terms that in his considered judgment under the well-settled law found in the decisions of the Supreme Court of Illinois and listed in his letter, any attempt on the part of the City Council to repeal the ordinance of June 21, 1945, which in turn extended the term of the grant for the operation of taxi cabs in the City of Chicago to December 31, 1950, would be contrary to law and make such an ordinance void.

That a municipality has the power under the "Cities and Villages Act" to regulate the use of its streets and license the operation of taxicabs in the city limits as a part of its

local transportation system and facilities, is too well settled to admit of any controversy. *People* v. *Thompson*, 341 Ill. 166; *Capitol Taxicab Co.* v. *Cermak*, 60 Fed. (2nd) 608; *City* v. *Eagle Taxi Co. et al.*, 273 Ill. App. 614.

The ordinances of 1934, 1937 and June, 1945 are attacked by counsel for defendants as void because, they argue, they create a monopoly, are highly discriminatory and constitute a surrender by the City of its police power to regulate and permit the use of its streets by all persons alike, and that the limitation under the 1934 and 1937 ordinances of the issuance of four thousand one hundred eight (4,108) and three thousand (3,000) licenses respectively is an arbitrary and illegal regulation.

The ordinance of 1934 is not in the opinion of this court open to such objections as to its validity. It provides opportunity for all to apply for licenses. It prescribes the qualifications required, the obligations to be assumed by licensees and for a hearing in the granting or revocation of such licenses.

The fact that the Council authorized a majority of the licenses to be issued to complainants does not make the ordinance vulnerable to attack as creating a monopoly. *People* v. *City*, 349 Ill. 304 at p. 326.

In a city like Chicago with a population of over three and one-half (3½) millions it is conceivable and quite obvious that a chaotic, demoralizing, dangerous and intolerable system of taxicab transportation would result if, either four thousand one hundred eight (4,108) or three thousand (3,000) licenses were issued to that many individuals, each owning or renting his own taxicab; responsible to no employer; working as few or as many hours of the day as he pleased; under no discipline to answer to a call for taxi service; many with no financial responsibility, and with no regular inspection of the physical condition of the taxicab as is to be found in a highly efficient, trained taxicab organization.

The safety, health and general welfare of the public requiring taxi service would be subjected to entirely too dangerous a risk if these supposed conditions existed. To protect which the municipality has the power to make reasonable regulations and restrictions in the use of its streets as it did in the 1934 ordinance. *Capitol Taxicab Co.* v. *Cermak,* 60 Fed. (2nd) 608.

Therefore, the City Council having police powers to protect the public in the operation of taxicabs could not be accused of abusing its discretion by granting the majority of the licenses under the ordinances of 1934 and 1937 to taxicab companies having responsibility, efficiency, equipment and the necessary facilities to safely carry on for the benefit of the public the business of operating taxicabs, instead of issuing all such licenses to each individual. *People* v. *Ci[illegible]supra.*

It is argued by counsel for the defendants that since it appears from the evidence that the Yellow Cab Company has not operated two hundred thirty-four (234) of the cabs shown in the list submitted by the Commissioner in his letter of January 22, 1946, and the Checker Company has not operated eighty-seven (87) of its cabs, therefore it lies in the power of the Commissioner under the resolution of the Council, December 28, 1945, to revoke the licenses as to such taxicabs and issue permits as provided in the order of the City Council dated January 16, 1946.

It appears clearly from the sworn allegations of the complaints and evidence heard, that war time conditions followed by the reconversion period from war to peace time economy has made it impossible for the complainants to procure new taxicabs in place of the number shown to be inoperable, nor to procure enough new parts for replacement in most of said taxicabs. Not only is such fact alleged in the sworn complaints and proven by the evidence, but the City Council itself went on record in its

resolution adopted May 24, 1945 that it knew that the life expectancy of licensed taxicabs was three years, and that many of said taxicabs had been in operation at least a year and a half more than its life expectancy, and that due to the lack of authority from the War Production Board and Office of Defense Transportation it had been impossible for the licensees of taxicabs to replace in operable taxicabs.

Such a public declaration by the City Council in its resolution, if there was nothing more in this record, would be sufficient to relieve the complainants from the penalty threatened by the Commissioner, viz: the revocation of the licenses for the two hundred thirty-four (234) taxicabs of the Yellow Cab Company and eighty-seven (87) of the Checker Company, as indicated in his notice. It proves clearly that the discontinuance of the service of such taxicabs was due to circumstances beyond the control of the licensees as provided in Section 7 of the ordinance of 1934. In addition to this the Commissioner by his notice of January 22, 1946 threatened to usurp the power of revocation, which under the ordinance of 1934 (Sections 7 & 10) and not changed by subsequent ordinances, belonged to the City Council and to the Mayor of Chicago and only after notice and hearing to the licensee as provided in said ordinance. It is clear that no such hearing was had nor opportunity for hearing given the licensee to explain why the number of taxicabs listed in the letter of the Commissioner to the complainants could not be operated or replaced by new taxicabs. It does appear, however, from the evidence that since the notice given by the Commissioner twenty-one (21) of the two hundred thirty-four (234) cabs of the Yellow Company were placed back in service and thirty (30) of the said taxicabs of the Checker Company were placed back in service. It further appears from the evidence that since the end of war hostilities, and conversion from war to peace time economy, it has been possible to expedite to a limited degree the replacement

and return of some of the inoperable taxicabs. This court must take judicial notice also, and it so appears from the evidence, that the pending steel strike in the nation has seriously interfered with the procurement of necessary new parts for replacement in taxicabs and will continue to so interfere with such procurement during said strike.

Were the Commissioner to carry out his threat contained in his letter of January 22, 1946, it would be clearly contrary to the provisions of the 1934 ordinance, and result in serious injury to the contract rights and property investment of the complainants herein. Against such arbitrary action of the Commissioner so threatened the complainants are not without relief and a court of equity under the authorities cited has the power to prevent such illegal action on the part of the Commissioner.

It is argued, however, for the defendants, upon this hearing, that the resolution of the Council adopted December 28, 1945 and the order or resolution passed by the Council January 16, 1946 is sufficient authority for the Commissioner to act in accordance with his notice to the complainants to revoke such licenses.

The 1934 ordinance, when accepted by the complainants and the other licensees, became a contract between the City and the licensees. In *People* v. *Chicago Telephone Co.*, 245 Ill. 121, the Supreme Court in passing upon the effect of a license to use the public streets and alleys said:

> "* * * In granting to the Chicago Telephone Company a license to construct its poles, wires and other fixtures in the streets and alleys of the town, the board of trustees of the town of Cicero was exercising the power to regulate and control the use of the streets and alleys within the limits of the town which has been delegated to it by the General Assembly. It was exercising a legislative function as a governmental agency of the State, and the grant was made by the town in its governmental and not in its proprietary capacity.

"The grant thus made was a license which, when accepted by the telephone company, became a contract between the town, as a governmental agency of the State, and the telephone company.

"Neither the town of Cicero nor any other municipality succeeding to its governmental powers over the streets and alleys of the territory then included within the town of Cicero, or any part thereof, had or could have any right to repudiate the contract or take back the grant without the consent of the telephone company; * * * likewise the telephone company would have no right to repudiate the contract or avoid the obligations imposed upon it by the ordinance without the consent of the governmental agency in control of the streets and alleys in which it desired to continue to maintain and construct its poles, wires and other fixtures."

To the same effect is *Springfield* v. *Inter-State Telephone Co.*, 279 Ill. 324, where it is said:

"* * * When the privilege of the use of a street is granted by an ordinance which is accepted and acted upon by the grantee, it becomes a contract binding upon the city, from which it cannot recede. (*Chicago Municipal Gas Light Co.* v. *Town of Lake*, 130 Ill. 42; *City of Belleville* v. *Citizens' Horse Railway Co.*, 152 id. 171; *Village of Madison* v. *Alton, Granite and St. Louis Traction Co.*, 235 id. 346.)"

If the ordinance of 1934 be considered a contract between the City and the licensees, then such a contract may not be terminated, except in the manner prescribed by the ordinance as already indicated. Hence the passage of the order or resolution adopted by the Council January 16, 1946 likewise is an unauthorized and illegal interference with the contract rights of the parties prescribed by the 1934 ordinance.

Moreover the so-called order or resolution of January 16, 1946 is void for uncertainty, vagueness and lacking wholly in setting up any standard of qualification for the

permittees to operate taxicabs, nor does it make the issuance of the permits subject to any of the provisions, obligations and liabilities required of the licensees in the ordinance of 1934. There is no condition imposed by this order upon the permittees to comply with any of the provisions of the 1934 ordinance, which in no way has been changed in its essential provisions by any of the subsequent ordinances already referred to. It is unthinkable that permittees, whoever they be, would be permitted to operate taxicabs in Chicago without requiring them for the protection of the public, to qualify under the 1934 and 1937 ordinances.

Counsel for defendants with commendable frankness have admitted that if their objections to the validity of the 1934 and 1937 ordinances are sound, then the order or resolution of the Council adopted January 16, 1946 is likewise invalid.

It is unfortunate that the City Council should have ignored the opinion of the Corporation Counsel furnished to it as early as September, 1945 warning them of the invalidity of their contemplated action to pass any ordinance which would interfere with the grant to licensees under the 1934 ordinance, and should have proceeded as it did to pass the order of January 16, 1946 authorizing the issuance of two hundred fifty (250) permits to operate taxicabs..

This court feels that the City Council was not justified in proceeding upon such questionable grounds of validity of which they had ample warning by the Corporation Counsel, and thereby build up false hopes of returning veterans as to their right to a permit to operate a taxicab under such an order.

The order of January 16, 1946 is clearly invalid and cannot be justified under any of the settled rules of law governing contract ordinances, such as the one of 1934 and 1937. *Brooklyn City Railway Co.* v. *Whalen,* 182 N. Y. Supplement 283.

If these complainants or any of the licensees under the 1934 ordinance or 1937 ordinance have violated the provisions of those ordinances or failed to comply with its provisions, it is open to the City authorities under those ordinances to revoke the licenses granted, provided only that it is done in accordance with the procedure outlined in these ordinances. To proceed otherwise would be a deprivation of the contract rights of the licensees under those ordinances and result in serious loss to such licensees, to prevent which this court has the power to act.

Only in the exact administration of the law will justice in the long run be done and the confidence of the people in the courts be maintained.

It follows from what has been said that the complainants are entitled to an injunction, pendente lite, as prayed for in the complaints, and accordingly it is so ORDERED.

pp. 1, 2, 3, 4, 5, 9, 10.

SUPREME COURT OF THE UNITED STATES

No. 1035.—October Term, 1946.

The United States of America, Appellant, *v.* Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmalee Transportation Company, et al.	On Appeal From the District Court of the United States for the Northern District of Illinois.

[June 23, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

The United States filed a complaint in the federal district court below pursuant to § 4 of the Sherman Anti-Trust Act, 26 Stat. 209, as amended, to prevent and restrain the appellees from violating §§ 1 and 2 of the Act. The complaint alleged that the appellees have been and are engaged in a combination and conspiracy to restrain and to monopolize interstate trade and commerce (1) in the sale of motor vehicles for use as taxicabs to the principal cab operating companies in Chicago, Pittsburgh, New York City and Minneapolis, and (2) in the business of furnishing cab services for hire in Chicago and vicinity. The appellees moved to dismiss the complaint for failure to state a claim upon which relief might be granted. That motion was sustained. 69 F. Supp. 170. The case is now here on direct appeal by the United States. 330 U.S. —.

The alleged facts, as set forth in the complaint, may be summarized briefly. In January, 1929, one Morris Markin and others commenced negotiations to merge the more important cab operating companies in Chicago, New York and other cities. Markin was then president and

general manager, as well as the controlling stockholder, of the Checker Cab Manufacturing Corporation (CCM). That company was engaged in the business of manufacturing taxicabs at its factory in Kalamazoo, Michigan, and shipping them to purchasers in various states.

Parmelee Transportation Company (Parmelee) was organized in April, 1929, with 62% of its stock being owned by CCM. It promptly took over the business of operating special unlicensed cabs to transport passengers and their luggage between railroad stations in Chicago, pursuant to contracts with railroads and railroad terminal associations. It then acquired a controlling interest in the Chicago Yellow Cab Company, Inc. (Chicago Yellow). This latter company holds all the capital stock of Yellow Cab Company (Yellow), the owner and operator of "Yellow" cabs in Chicago and vicinity. Yellow presently holds 53% of the taxicab licenses outstanding in Chicago. In addition, Parmelee acquired or organized subsidiary companies which now hold 100% of the taxicab licenses outstanding in Pittsburgh, 58% of those in Minneapolis, and 15% of those in New York City.[1]

In January, 1930, Cab Sales and Parts Corporation (Cab Sales) was incorporated. At all times, Markin has been the sole stockholder and the active manager of this company. It now owns and operates the "Checker" cabs in Chicago and vicinity, using licenses held in the name

[1] Between October, 1929, and June, 1930, Parmelee acquired all the taxicab companies operating in Pittsburgh; it now operates the cabs through two wholly owned subsidiaries. Early in 1931, Parmelee formed a company to operate cabs in Minneapolis; a wholly owned subsidiary now operates 125 of the 214 cabs licensed in that city. Beginning early in 1929, Parmelee acquired certain companies operating cabs in New York City; it later consolidated them in a wholly owned subsidiary now holding 2,000 of the 13,000 licenses outstanding in that city.

; since 1934, he has been the sole stockholder,

of Checker Taxi Company (Checker).[2] Checker presently has no employees and no property other than 1,000 Chicago taxicab licenses, *or one-third of the total outstanding*, which it leases to Cab Sales; nearly all of its stock is owned by associates of Markin.[3]

Markin also obtained a substantial interest in the DeLuxe Motor Cab Company, which was the third largest cab operating company in Chicago in 1929 with its 400 licenses. He caused all of its stock to be sold to Parmelee. It was then consolidated into a new company; in 1932, Cab Sales bought a controlling interest in this consolidated concern and caused it to suspend operations. Thus, by the end of 1932, Markin had gained control of the three largest taxicab companies operating in Chicago and, through Parmelee, had substantial footholds in the taxicab business in New York City, Pittsburgh and Minneapolis.

Yellow and Checker have consistently held a vast majority of the Chicago taxicab licenses. There were 5,289 licenses outstanding in January, 1929, of which Yellow held 2,335 (44%) and Checker 1,750 (33%). In Sep-

[2] Checker originally was a cooperative company, the stockholders of which were the various owners of "Checker" cabs. In February, 1930, as part of a settlement of litigation between it and CCM, Checker agreed that its drivers would purchase all of their taxicabs from Cab Sales for a period of five years at $2,350 per cab. At the same time, CCM appointed Cab Sales as exclusive agent for these sales and agreed to sell its cabs to Cab Sales at $1,906 per cab. During the five-year life of this agreement, Checker drivers bought a large number of cabs from Cab Sales at prices about $400 above those at which Cab Sales bought them from CCM. As these drivers defaulted in their payments from time to time, Cab Sales would foreclose and take over the ownership and operation of the cabs. Since 1941, it has owned and operated all of these cabs.

[3] By 1932, Cab Sales had acquired over 97% of the stock of Checker. Markin caused this stock to be sold to certain of his associates in 1942.

tember, 1929, the City of Chicago adopted an ordinance to the effect that no more licenses should be issued, except for renewals, unless it should be found that the public convenience and necessity required otherwise. The substance of this provision was repeated in an ordinance adopted in May, 1934. Yellow and Checker subsequently made agreements to reduce the number of cabs in operation and to induce the city to lower the number of licenses outstanding to 3,000, of which Yellow would hold 1,500 and Checker 1,000.

On December 22, 1937, the City of Chicago passed an ordinance providing for a method of voluntary surrender by licensees of a sufficient number of their licenses to reduce the number outstanding to 3,000. It was also provided that if the number of authorized licenses should later be increased above the 3,000 figure, such additional licenses should first be issued to the original licensees in proportion to, and up to, the number which they had surrendered. Yellow and Checker then made an agreement to implement this ordinance. Yellow agreed to surrender 571 licenses (leaving it with 1,595) and Checker agreed to surrender 500 (leaving it with 1,000); both parties promised to attempt to secure for Yellow 60% and for Checker 40% of any licenses in excess of 3,000 which the city might later issue. ~~Other licensees surrendered the balance of the required reduction, leaving 3,000 licenses outstanding.~~

On January 16, 1946, the city authorized the issuance of 250 licenses to war veterans. Yellow was notified that 234 of its licenses, representing that number of cabs which had not been in operation, would be canceled. Checker was given a similar notice as to 87 licenses. Yellow and Checker then brought suit in an Illinois court to enjoin the city from issuing the new licenses and from canceling any of the ones issued to them; they claimed that economic conditions prevented them from procuring taxicabs

As a result, 3,000 licenses were left outstanding.

to replace those which had become inoperable. The Illinois courts held that the 1937 ordinance created a contract between the city and the licensees and that the city could not issue licenses to the war veterans without first replacing the licenses which Yellow and Checker had surrendered; it was further held that no monopoly existed, since the number of licenses and the rights of the licensees were subject to the control of the city. *Yellow Cab Co. v. City of Chicago*, 396 Ill. 388, 71 N. E. 2d 652.

Such is the nature of the facts set forth in the complaint. Those facts allegedly give rise to a combination and conspiracy on the part of the appellees (Yellow, Chicago Yellow, Parmelee, Cab Sales, Checker, CCM and Markin) in violation of the Sherman Act. The problems thereby raised can best be considered in relation to the purported terms of this combination and conspiracy. For present purposes, of course, we must assume, without deciding or implying, that the various facts and allegations in the complaint are true.

I.

It is said that the appellees have agreed to control the operation and purchase of taxicabs by the principal operating companies in Chicago, New York City, Pittsburgh and Minneapolis, insisting that they purchase their cabs exclusively from CCM. This excludes all other manufacturers of taxicabs from 86% of the Chicago market, 15% of the New York City market, 100% of the Pittsburgh market and 58% of the Minneapolis market. At the same time, the trade of the controlled cab companies is restrained since they are prevented from purchasing cabs from manufacturers other than CCM. The result allegedly is that these companies must pay more for cabs than they would otherwise pay, their other expenditures are increased unnecessarily, and the public is charged high rates for the transportation services rendered.

The commerce which is asserted to be restrained in this manner has a character that is undeniably interstate. The various cab operating companies do business in Illinois, New York, Pennsylvania and Minnesota. By virtue of the conspiracy, they must purchase all of their cabs from CCM. Since CCM's factory is located in Michigan, interstate sales and shipments are inevitable if the conspiracy is to be effectuated. The conspiracy also prevents those operating companies from purchasing cabs from other manufacturers, thus precluding all interstate sales and shipments between each individual cab operating company and manufacturers (other than CCM) located in other states. Interstate trade, in short, is of the very essence of this aspect of the conspiracy.

But the amount of interstate trade thus affected by the conspiracy is immaterial in determining whether a violation of the Sherman Act has been charged in the complaint. Section 1 of the Act outlaws unreasonable restraints on interstate commerce, regardless of the amount of the commerce affected. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, note 59, p. 225; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 485. And § 2 of the Act makes it unlawful to conspire to monopolize "any part" of interstate commerce, without specifying how large a part must be affected. Hence it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy. The complaint in this case deals with interstate purchases of replacements of some 5,000 licensed taxicabs in four cities.[4] That is an appreciable amount of commerce under any standard. See *Montague & Co.* v. *Lowry*, 193 U. S. 38.

Likewise irrelevant is the importance of the interstate commerce affected in relation to the entire amount of that type of commerce in the United States. The Sherman

[4] 2,595 licenses in Chicago, 2,000 in New York City, 125 in Minneapolis, and an estimated 280 in Pittsburgh.

Act is concerned with more than the large, nation-wide obstacles in the channels of interstate trade. It is designed to sweep away all appreciable obstructions so that the statutory policy of free trade might be effectively achieved. As this Court stated in *Indiana Farmer's Guide Co.* v. *Prairie Farmer Co.*, 293 U. S. 268, 279, "The provisions of §§ 1 and 2 have both a geographical and distributive significance and apply to any part of the United States as distinguished from the whole and to any part of the classes of things forming a part of interstate commerce." It follows that the complaint in this case is not defective for failure to allege that CCM has a monopoly with reference to the total number of taxicabs manufactured and sold in the United States. Its relative position in the field of cab production has no necessary relation to the ability of the appellees to conspire to monopolize or restrain, in violation of the Act, an appreciable segment of interstate cab sales. An allegation that such a segment has been or may be monopolized or restrained is sufficient.

Nor can it be doubted that combinations and conspiracies of the type alleged in this case fall within the ban of the Sherman Act. By excluding all cab manufacturers other than CCM from that part of the market represented by the cab operating companies under their control, the appellees effectively limit the outlets through which cabs may be sold in interstate commerce. Limitations of that nature have been condemned time and again as violative of the Act. *Associated Press* v. *United States*, 326 U. S. 1, 18–19, and cases cited. In addition, by preventing the cab operating companies under their control from purchasing cabs from manufacturers other than CCM, the appellees deny those companies the opportunity to purchase cabs in a free, competitive market.[5] The Sherman

[5] To the extent that the controlled operating companies are charged higher than the open market prices, they are injured.

Act has never been thought to sanction such a conspiracy to restrain the free purchase of goods in interstate commerce. See *Montague & Co.* v. *Lowry, supra; Binderup* v. *Pathe Exchange*, 263 U. S. 291.

The fact that these restraints occur in a setting described by the appellees as a vertically integrated enterprise does not necessarily remove the ban of the Sherman Act. The test of illegality under the Act is the presence or absence of an unreasonable restraint on interstate commerce. Such a restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent. Similarly, any affiliation or integration flowing from an illegal conspiracy cannot insulate the conspirators from the sanctions which Congress has imposed. The corporate interrelationships of the conspirators, in other words, are not determinative of the applicability of the Sherman Act. That statute is aimed at substance rather than form. See *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360–361, 376–377.

And so in this case, the common ownership and control of the various corporate appellees are impotent to liberate the alleged combination and conspiracy from the impact of the Act. The complaint charges that the restraint of interstate trade was not only effected by the combination of the appellees but was the primary object of the combination. The theory of the complaint, to borrow language from *United States* v. *Reading Co.*, 253 U. S. 26, 57, is that "dominating power" over the cab operating companies "was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control." If that theory is borne out in this case by the evidence, coupled with proof of an undue restraint of interstate trade, a plain violation of the Act has occurred. Cf. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189.

II.

It is said that the appellees have agreed that Yellow and Cab Sales will not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago. The complaint points out the well-known fact that Chicago is the terminus of a large number of railroads engaged in interstate passenger traffic and that a great majority of the persons making interstate railroad trips which carry them through Chicago must disembark from a train at one railroad station, travel from that station to another some two blocks to two miles distant, and board another train at the latter station. The railroads often contract with the passengers to supply between-station transportation in Chicago. Parmelee then contracts with the railroads and the railroad terminal associations to provide this transportation by special cabs carrying seven to ten passengers. Parmelee's contracts are exclusive in nature.

The transportation of such passengers and their luggage between stations in Chicago is clearly a part of the stream of interstate commerce. When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. *The Daniel Ball*, 10 Wall. 557, 565. That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. See *Stafford* v. *Wallace*, 258 U. S. 495.

Any attempt to monopolize or to impose an undue restraint on such a constituent part of interstate commerce brings the Sherman Act into operation. Here there is an alleged conspiracy to bring nearly all the Chicago taxicab companies under common control and to eliminate com-

petition among them relative to contracts for supplying transportation for this transfer in the midst of interstate journeys. Only Parmalee is free to attempt to procure such contracts; Yellow and Cab Sales are forbidden to compete for such contracts, despite the fact that they conceivably might provide the same transportation service at lower cost to the railroads.[6] The complaint accordingly states a violation of the Sherman Act in this respect. See *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211.

It is true, of course, that exclusive contracts for the transportation service in question are not illegal. *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279. But a conspiracy to eliminate competition in obtaining those exclusive contracts is what is alleged in this case and it is a conspiracy of that type that runs afoul of the Sherman Act. Moreover, the fact that the competition restrained is that between affiliated corporations cannot serve to negative the statutory violation where, as here, the affiliation is assertedly one of the means of effectuating the illegal conspiracy not to compete.

III.

Finally, it is said that the appellees have conspired to control the principal taxicab operating companies in Chicago and to exclude others from engaging in the transportation of interstate travelers to and from Chicago railroad stations. To that end, they have conspired to induce the City of Chicago to limit the number of licensed taxicabs to 3,000, to hold 2,595 (or 86%) of these licenses themselves, to obtain for Yellow and Checker any licenses

[6] The District Court thought that Parmalee's equipment and services are so totally different from the taxicab business of Yellow and Cab Sales as to make competition for the contracts impractical and unlikely. But that is a matter for determination at the trial on the merits and does not negative the sufficiency of the complaint.

above 3,000 which the city might later issue, and to prevent new operators from entering the cab business in Chicago by having Yellow and Checker annually renew licenses for cabs which they do not operate and have no intention of operating.

The interstate commerce toward which this aspect of the conspiracy is directed is claimed to arise out of the following facts. Many persons are said to embark upon interstate journeys from their homes, offices and hotels in Chicago by using taxicabs to transport themselves and their luggage to railroad stations in Chicago. Conversely, in making journeys from others states to homes, offices and hotels in Chicago, many persons are said to complete such trips by using taxicabs to transport themselves and their luggage from railroad stations in Chicago to said homes, offices and hotels. Such transportation of persons and their luggage is intermingled with the admittedly local operations of the Chicago taxicabs. But it is that allegedly interstate part of the business upon which rests the validity of the complaint in this particular.

We hold, however, that such transportation is too unrelated to interstate commerce to constitute a part thereof within the meaning of the Sherman Act. These taxicabs, in transporting passengers and their luggage to and from Chicago railroad stations, admittedly cross no state lines; by ordinance, their service is confined to transportation "between any two points within the corporate limits of the City." None of them serves only railroad passengers, all of them being required to serve "every person" within the limits of Chicago. They have no contractual or other arrangement with the interstate railroads. Nor are their fares paid or collected as part of the railroad fares. In short, their relationship to interstate transit is only casual and incidental.

In a sense, of course, a traveler starts an interstate journey when he boards a conveyance near his home,

office or hotel to travel to the railroad station, from which the journey is continued by train; and such a journey ends when he alights from a conveyance near the home, office or hotel which constitutes his ultimate destination. Indeed, the terminal points of an interstate journey may be traced even further to the moment when the traveler leaves or enters his room or office and descends or ascends the building by elevator.

But interstate commerce is an intensely practical concept drawn from the normal and accepted course of business. *Swift & Co.* v. *United States*, 196 U. S. 375, 398; *North American Co.* v. *S. E. C.*, 327 U. S. 686, 705. And interstate journeys are to be measured by "the commonly accepted sense of the transportation concept." *United States* v. *Capital Transit Co.*, 325 U. S. 357, 363. Moreover, what may fairly be said to be the limits of an interstate shipment of goods and chattels may not necessarily be the commonly accepted limits of an individual's interstate journey. We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical considerations.

Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. The traveler has complete freedom to arrive at or leave the station by taxicab, trolley, bus, subway, elevated train, private automobile, his own two legs or various other means of conveyance. Taxicab service is thus but one of many that may be used. It is contracted for independently of the railroad journey and may be utilized whenever the traveler so desires. From the standpoints of time and continuity, the taxicab trip may be quite dis-

tinct and separate from the interstate journey. To the taxicab driver, it is just another local fare.

Pennsylvania R. Co. v. *Knight*, 192 U. S. 21, demonstrates this common understanding. The Court there held that the Pennsylvania Railroad Company was subject to a state franchise tax by reason of the fact that it maintained a cab service within the boundaries of New York City for the sole benefit of its rail passengers. Its cabs transported the passengers between its ferry station and their residences and hotels. The Court stated that this cab service was an independent local service, preliminary or subsequent to any interstate transportation and not included in the contract of railroad carriage. Hence it was subject to state taxation. It is true that this ruling as to the extent of a state's taxing power is not conclusive as to the boundaries of interstate commerce for federal purposes. *Bacon* v. *Illinois*, 227 U. S. 504, 516; *Binderup* v. *Pathe Exchange*, *supra*, 311. But it does illustrate the normal and accepted concept of the outer limits of this type of interstate journey. And it is that concept that is determinative here.

We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act. In *Stafford* v. *Wallace*, *supra*, 528, the Court made plain that nothing in the *Knight* case was authority for the proposition that "if such an agency [local cab service] could be and were used in a conspiracy unduly and constantly to monopolize interstate passenger traffic, it might not be brought within federal restraint." Likewise, we are not to be understood in this case as deciding that all conspiracies among local cab drivers are so unrelated to interstate commerce as to fall outside the federal ken. A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce

to justify the imposition of the Sherman Act or other federal laws resting on the commerce power of Congress.

All that we hold here is that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act.

It follows that the complaint, insofar as it is based on such local taxicab service, fails to state a cause of action under the Sherman Act. It thus becomes unnecessary to discuss the points raised as to the substance of that part of the alleged conspiracy relating to this local service. Our conclusion in this respect, however, does not lead to an affirmance of the District Court's dismissal of the complaint. For the reasons set forth in Parts I and II of this opinion, the complaint does state a cause of action under the Act, entitling the United States to a trial on the merits. Since the portion of the complaint dealt with in Part III of this opinion is defective, appropriate steps should be taken to delete the charges in relation thereto. With that understanding, we reverse the judgment of the District Court and remand the case for further proceedings consistent with this opinion.

Reversed.

MR. JUSTICE BLACK and MR. JUSTICE RUTLEDGE agree with Parts I and II of this opinion but dissent from the holding in Part III.

MR. JUSTICE BURTON concurs in Part III of this opinion. However, he believes that the complaint as a whole fails to state a cause of action and that, therefore, the judgment of the District Court dismissing it should be affirmed.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.